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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**OPAQUE COMMUNITIES: A FRAMEWORK FOR
ASSESSING POTENTIAL HOMELAND SECURITY
THREATS FROM VOIDS ON THE MAP**

by

Matthew E. Speer

September 2014

Thesis Advisor:
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**OPAQUE COMMUNITIES: A FRAMEWORK FOR ASSESSING POTENTIAL
HOMELAND SECURITY THREATS FROM VOIDS ON THE MAP**

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Submitted in partial fulfillment of the
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ABSTRACT

Opaque communities confound homeland security situational awareness and integration efforts, which generates pervasive threat perceptions that have often escalated into governmental interventions and violent confrontations. Governmental failures to effectively communicate with, and judiciously address past incidents involving opaque communities, have led to tactical response disasters; future inability to foster contact with such groups could present grave, unforeseen challenges to homeland security and surrounding community resiliency efforts. Utilizing a structured focused method, this thesis explores whether governmental entities adopt a common set of operational assumptions regarding threats emanating from opaque communities and, if so, whether alternative interactional frameworks for integrating such communities into homeland security efforts are available. This thesis presents case study analysis of interventions involving the opaque communities of the Branch Davidians at Waco, MOVE in Philadelphia, and FLDS YFZ Ranch in Eldorado and finds that ingrained default oppositional frameworks influenced governmental deliberations throughout each event. This inquiry concludes that targeted constructive communication strategies utilizing dedicated interlocutors knowledgeable about a given community will assist in preventing future unnecessary and costly official interventions.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACS	Automated Case Support
AUSA	Assistant United States Attorney
BATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CBP	Customs and Border Protection
CFR	Code of Federal Regulations
CPS	Child Protective Services
CSA	The Covenant, the Sword, and the Arm of the Lord
DEA	Drug Enforcement Administration
DFPS	Texas Department of Family and Protective Services
DHS	Department of Homeland Security
DIOG	Domestic Investigations and Operations Guide
DOJ	Department of Justice
DPS	Department of Public Safety
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
FLDS	The Fundamentalist Church of Jesus Christ of Latter Day Saints
FOIA	Freedom of Information Act
GAO	General Accounting Office
JTTF	Joint Terrorism Task Force
MCSD	McLennan County Sheriff's Department
I&A	Office of Intelligence and Analysis
IC	Intelligence Community
ICE	Immigration and Customs Enforcement
INS	Immigration and Naturalization Service
L&I	Licenses and Inspections Department
LDS	The Church of Jesus Christ of Latter-day Saints
NSI	National Suspicious Activity Reporting Initiative
PERC	Powelton Emergency Rights Committee
RAC	Resident Agent in Charge
SAR	Suspicious Activity Reporting

SDA	Seventh Day Adventism
SIT	Social Identity Theory
TSA	Transportation Security Agency
UEP	United Effort Plan
USCIS	United States Citizenship and Immigration Services
YFZ	Yearning for Zion

EXECUTIVE SUMMARY

Opaque communities confound homeland security situational awareness and integration efforts, which generates pervasive threat perceptions that often escalate into governmental interventions and violent confrontations. As a result of their closed and often arcane nature, opaque communities frustrate governmental efforts to conduct law enforcement functions, proactively detect homeland security threats, coordinate disaster planning, and prevention activities, and optimize incident response. Unable to comprehensively assess voids on the map within their respective areas of responsibility, homeland security stakeholders exhibit a default tendency to perceive threat streams emanating from such groups and employ a respective confrontational posture. Concurrently, authorities have repeatedly attributed member's individual crimes and discrete instances of illicit behavior to the entire community, creating self-imposed barriers to viable alternative investigative and enforcement options. Governmental failures to communicate with and effectively address past incidents involving opaque communities have led to tactical response disasters; future inability to foster contact with such groups could present grave, unforeseen challenges to homeland security and surrounding community resiliency efforts.

This thesis introduces the term opaque community as a categorization for social configurations that withdraw to a shared domicile, enclave, or compound and disassociate with their surrounding area. Such groups create unique impediments to the maintenance of homeland security due to their size and corresponding potential to constitute de facto extra-territorial spaces within a given jurisdiction's area of responsibility. Numerous unsuccessful enforcement actions targeting opaque communities over the past 50 years demonstrate such groups generate perennial challenges to government actors at all jurisdictional levels. Though most previous official interventions into such groups have been predicated on the suspected existence of criminal activity and threats, all phases and aspects of homeland security planning, prevention, response, recovery, and resiliency building are potentially negatively impacted by their existence.

Research determined that existing literature on opaque communities has largely failed to analyze the prelude to tactical operations involving opaque communities from the viewpoint of the practitioner. This study's line of inquiry presupposes that the inestimable or unfathomable nature of one's neighbor inherently undermines one's ability to estimate and plan for his or her own safety. Using a structured focused method, this thesis employs case studies involving failed interventions into domestic opaque communities situated in both urban and rural settings and impacting decision makers at the federal, state, and local levels. Case studies include the 1993 federal siege of the Branch Davidians at Waco, Texas, the 1985 assault of the MOVE property in Philadelphia, and the 2008 Texas raid of the Fundamentalist Latter Day Saints Yearning for Zion Ranch in Eldorado, Texas. The author identifies indicators of official presumption of intending absconders, projected and often unfounded concerns for women and children community members, and suspicions regarding behavior that is either illegal or offends the prevailing social conscience as political pressure catalysts which motivated government actors to intervene into these closed groups. Research explores a recurring phenomenon which suggests the unavailability of situational awareness information prompts officials to harbor unsubstantiated and default perceptions indicative of threats emanating from these opaque communities. The menace of self-fulfilling group narratives due to amplified miscommunication compounded by governmental intervention under duress is likewise examined as a causative factor for previous failed compelled interactions. Governmental outreach strategies that pursued constructive dialogue, educated by an understanding of the ideological, eschatological, and worldview differences of these groups, were hypothesized to be the independent variable that had the greatest effect on the outcome of each case.

This thesis determines that a lack of situational awareness information, aggravated by the emergence of official oppositional frameworks regarding opaque communities, negatively impacted the interactional trajectory of all cases examined. It furthermore concludes that targeted constructive communication strategies utilizing dedicated interlocutors knowledgeable about a given community will assist in preventing future unnecessary and costly official interventions. Findings suggest that federal and

state agencies would be best utilized in roles providing support and assistance to the office of county sheriff or equivalent trusted local law enforcement entity when attempting to integrate opaque communities into homeland security planning and response efforts. Finally, various operational, practical, and legal considerations regarding official efforts to both identify and avoid oppositional framework tendencies and obtain situational awareness intelligence on opaque groups are highlighted, along with potential areas for future research in this field.

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ACKNOWLEDGMENTS

Those who cannot remember the past are condemned to repeat it.

–George Santayana, *The Life of Reason*, 1905–06;
quote displayed above Jim Jones pulpit chair at the
site of the People’s Temple mass suicide in
Jonestown, Guyana, November, 1978

*The Moving Finger writes; and, having writ,
Moves on: nor all thy Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all thy Tears wash out a Word of it.*

–Omar Khayyam, *The Rubaiyat*, 11th Century
Persian poet, mathematician, and philosopher,

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I. INTRODUCTION

A. PROBLEM STATEMENT—RESEARCH QUESTION

Opaque communities confound homeland security situational awareness and integration efforts, which generates pervasive threat perceptions that often escalate into governmental interventions and violent confrontations. As a result of their closed and often arcane nature, opaque communities frustrate governmental efforts to conduct police and community relations, investigate criminal allegations, proactively detect homeland security threats, coordinate disaster planning and prevention activities, and optimize incident response. Opaque groups' disinclination to interact with the surrounding public stymies the capabilities of governmental situational awareness that is necessary for these activities. This prompts homeland security stakeholders to embrace a default tendency to perceive threat streams emanating from such groups and employ a respective confrontational posture. Concurrently, authorities have repeatedly attributed member's individual crimes and discrete instances of illicit behavior to the entire community, creating self-imposed barriers to viable alternative investigative and enforcement options. Governmental failures to communicate with and effectively address past incidents involving opaque communities have led to tactical response disasters; future inability to foster contact with such groups could present grave, unforeseen challenges to homeland security and surrounding community resiliency efforts. This thesis explores whether governmental entities adopt a common set of operational assumptions regarding threats emanating from opaque communities and, if so, whether alternative interactional frameworks for integrating such communities into homeland security efforts are available.

B. PROBLEM SPACE

Various seminal law enforcement events over the past 50 years have involved closed groups and communities residing in enclaves, communes, and other detached geographic venues. These social configurations create unique challenges to the maintenance of homeland security due to their size and corresponding potential to

constitute de facto extra-territorial spaces within a given jurisdiction's area of responsibility. Though most previous governmental interventions into such groups have been predicated on the suspected existence of criminal activity and threats, all phases and aspects of homeland security planning, prevention, response, recovery, and resiliency building are potentially negatively impacted by the existence of such opaque communities.

1. Context and Background

Prior to discussing the inherent threats posed by opaque communities, it is necessary to establish a common definition of what constitutes an opaque community, identify what existing critical inquiry frameworks regarding such phenomena exist, and justify why research into these social formations is relevant to homeland security stakeholders at various governmental levels.

a. Definition of Term “Opaque Community”

For the purposes of this study, an opaque community displays the following traits: first, opaque communities are groups of two or more families or cohabitation partnerships that are inaccessible to non-members, affiliates, or associates either through explicit or implied restriction of member interaction outside of the group. Such restrictions may be voluntarily adopted by members and can range from disassociation and refusal to willingly engage with outsiders to direct hostility and organizationally enforced secrecy. Second, opaque communities are those that gather at or relocate to a physical enclave where members have established permanent domicile, access to which is normally restricted to those belonging to the opaque group. Living arrangements could range from a shared multi-family dwelling to a private acreage, including a compound with numerous structures.

Note that just as germane to the definition of what constitutes an opaque community is what types of social collectives do not fulfill the aforementioned set of characteristics. Many groups are socially impenetrable to outsiders due to their arcane, foreign, or anomalous nature. However, many such communities simply appear opaque or befuddle interactions by outsiders primarily due to cultural, linguistic, or social

barriers to entry rather than outright reject contact through active disengagement or defense against intrusion from non-members. As an example, many Americans may find the comparatively fundamentalist and anachronistic beliefs and practices of many Anabaptist communities make these groups closed and indiscernible to non-believers. Yet, few would likely view a local Amish community as a homeland security challenge. This is potentially because although the Amish, Mennonites, Hutterites, and other fundamentalist or faith-based colonies or communal groups restrict membership and exhibit social and behavioral practices that are foreign to their surrounding communities, these groups neither purposely eschew outside contact nor expressly restrict non-member access to their domiciles or common areas. Though this lack of threat attribution could be linked to these groups' professed pacifism, other closed pacifistic religions, such as the Family International or the non-violent Fundamentalist Latter Day Saints, have repeatedly been the focus of domestic intervention efforts. Urban racial ghettos, regional ethnic, and cultural diasporas of foreign-born citizen, and concentrations of native non-English speaking minority groups likewise all constitute groups that may seem unapproachable but are not impenetrable to their surrounding communities. It may therefore be due to this very access that although there have certainly been repeated cultural misunderstandings between such groups and their surrounding neighbors, rarely have large scale governmental interventions targeting perceived threats in such communities been deemed necessary.

This thesis proposes the novel and inaugural use of the term “opaque community” as a means of differentiating socially closed and physically disassociated groups from the aforementioned alternative sub-community categories. There is no known usage of the term within the existing literature, a fact that itself suggests that such groups have not been previously categorized according to these situational and worldview-neutral identifiers. Though known opaque communities tend to adopt at least informal hierarchies and exhibit social unification via a common set of beliefs or shared cultural traits, the chosen term is purposely intended to describe groups independent of their ideology or organizational structure. This study presumes that regardless of an opaque community's given collective belief set or hierarchical nature, any social grouping that

physically detaches from a surrounding jurisdiction and exists in a purposely closed and secretive manner generates challenges to the establishment and maintenance of a secure and resilient homeland.

b. Existing Critical Inquiry Frameworks

Official inquiries into tragic or problematic governmental interventions involving opaque communities often fail to view the prelude to tactical operations from the eyes of the practitioner. Both governmental investigations and secondary literature normally gravitate towards and focus critique on tactical errors and the collapse of effective intergroup communications from the first instance or moment of compelled contact rather than on the prologue to this juncture. However, this anteceding period is often both lengthy and potentially ripe with bilateral missed opportunities for conflict avoidance. Given that duress and emotional distress necessarily impact all stakeholders in any governmental intervention or use of force scenario, it seems logical that identification of alternative avenues of peaceful interaction could be more readily discovered at government/community relationship junctures absent these aggravating factors. Rather than examine the catastrophic interplay of competing tactical agendas and clashing worldviews between government agents and opaque communities already engaged in conflict, this study proposes an examination of whether governmental oppositional frameworks towards opaque communities develop prior to attempted interventions and, if so, what alternative frameworks might assist future interactions.

In addition to the limitations of embarking on studies of a failed intervention from the point of first contact, barricade or negotiation scenario, or armed siege, restricting the aperture of critical analysis to only the ideologies of opaque groups ignores the government actor's underlying oppositional motivations. Rather than comprehensively examine the political and operational environment preceding failed interactions, most existing studies primarily seek answers in the unique characteristics, ideology, or contextual backdrop to a given opaque community. Yet regardless of stakeholder agencies' understanding of a given opaque community's potentially obscure beliefs or esoteric behavior, the closed and unknowable nature of opaque groups in and of itself

appears to lead to offensive posturing and reactive official decision making that exacerbates the negative trajectory of the government/community relationship. Existing literature on this topic has broadly identified interventions into opaque communities as isolated clashes between opposing, often unsympathetic worldviews. Yet this body has neither established commonalities between the underlying dangers commonly perceived by homeland security stakeholders as emanating from opaque communities with varying ideological tenets nor proposed a framework for effectively addressing such closed groups absent prejudiced, subjective, or worldview-blinded assessments. In short, an examination of the circumstantial prologue to enforcement events involving opaque groups from the operational perspective of homeland security stakeholders appears to be both a novel and potentially fertile area of study.

The aforementioned factors often attributed to failed interventions—tactical errors and communication barriers between actors holding diverging world views—are likely only further exacerbated by a group’s closed nature and officials’ resulting lack of situational awareness regarding its intentions and capabilities. Arguably, it is primarily because responsible officials are unable to regularly interact with—and thereby effectively assess—opaque communities that perceived needs for governmental intervention—and thus duress-inducing events—emerge. Such situations generate a domino effect in which an inability to interact and communicate inhibits situational awareness and foments suspicions of illicit behavior, thereby engendering a perceived need among officials to intrude and intervene. This framework in turn inhibits objective and unbiased official interactions with the community, which acts as a stimulus for impositions of governmental sovereignty and will. Mutual distrust grows, prompting community resistance and cascading bilateral escalation of force responses to imminent threats now manifested, often initiated in self-defense. Such situations culminate in further duress-induced miscommunication and misinterpretation of reactive behavior, ultimately leading to seemingly intractable tactical calamity. It seems therefore prudent to examine the default oppositional framework adopted by homeland security stakeholders when dealing with opaque communities as a potential catalyst for this dialectic.

c. Relevancy

Homeland security stakeholder agencies and officials from all levels of the United States' federalist system of government have an inherent interest in maintaining situational awareness of the jurisdiction for which they are responsible. Whether law enforcement or firefighter, emergency manager or public health practitioner, all entities holding a mandate to provide for the safety and security of the public need to be able to detect baseline abnormalities and threats, respond to calls for action and assistance, and maintain an ability to assess the potential needs and challenges emanating from the constituency to whom they provide governmental services. Consequently, opaque communities existing within a homeland security practitioner's jurisdiction constitute potential real and perceived threats and challenges to these efforts simply due to their opacity.

By examining past cases of governmental interventions into opaque communities, this research identifies whether a common phenomenon involving adoption by governmental actors of oppositional frameworks vis-à-vis opaque communities exists. Furthermore, it explores how, and to what extent should, state and local governments attempt to monitor opaque communities as well as suggests methods of proactively interacting with these constituencies to prevent miscommunication, confusion, and unanticipated consequences during periods of duress. The goal of this inquiry is to educate homeland security practitioners about suspected recurring oppositional frameworks that emerge when dealing with opaque communities, identify opportunities that exist for establishing constructive dialogue-based situational awareness, and suggest methods for integrating such groups with homeland security prevention, planning, and response activities while respecting 1st and 14th Amendment, privacy, and civil rights/civil liberties protections.¹

¹ Among other enumerated freedoms, the 1st Amendment guarantees the free exercise of religion and freedom of speech; the 14th Amendment ensures equal protection of the laws, limiting the actions of state and local officials and preventing governmental discrimination against classes of citizens.

2. Inherent Threats/Vulnerabilities

The inestimable or unfathomable nature of one's neighbor inherently undermines one's ability to estimate and plan for his or her own safety. National security strategists increasingly view such voids on the map or "denied areas" as defense challenges that require the "maintenance of credible deterrent capabilities forward in key regions," yet ones which often simultaneously transcend potential military contributions by nation states to the maintenance of geopolitical stability.² The global political and contingency planning challenges such spaces present are equally relevant to smaller jurisdictional elements where constrained response capacity and budget-sensitive governmental service footprints must be optimized to the served constituency's articulable needs. Beyond potential outward-facing threats, such situations likewise frustrate official interest in protecting those within a given opaque community who potentially either do not know where or how to ask for governmental assistance, aid, or protection, or who are being actively prevented from doing so.

a. *The Threat of the Unknown*

This threat of the unknown also manifests itself via political pressure to address the fears of impacted parties, real or conceived, that emerge within the community surrounding or adjacent to the opaque group. From a social constructionist theory perspective, Wright notes that governmental stakeholders are often compelled to perceive such social enigmas as, "'threats' to cherished values or institutions by groups of people who are effective in bringing the issue to the attention of authorities."³ He further states:

If authorities do not feel sufficient pressure to address a grievance, it may not receive the attention it deserves. On the other hand, if authorities are confronted with intense or concerted pressure by interest groups or social movement organizations, they are more likely to respond to grievance claims in order to appear responsive to constituents or selected groups

² Nathan Freier, "The Emerging Anti-Access/Area-Denial Challenge," Center for Strategic and International Studies, May 17, 2012, <https://csis.org/publication/emerging-anti-accessarea-denial-challenge>

³ Stuart A. Wright, "Deconstructing Official Rationales for the Texas State Raid on the FLDS," in *Saints under Siege: The Texas State Raid on the Fundamentalist Latter Day Saints*, ed. Stuart A. Wright and Stuart A. Richardson (New York and London: New York University Press, 2011), 125.

even when the problem is not severe or as threatening as claims-makers allege.⁴

Impacted surrounding communities, acting as such interest groups, can apply such pressure on governmental entities by expressing a variety of moral, cultural, prejudicial, or xenophobic grievances regarding neighboring opaque communities. However, the potential or latent “threat of the unknown” posed by opaque groups situated in impacted parties’ “own backyard” in and of itself constitutes a visceral motivator to demand just such official attention in the forms of reconnaissance, intrusion, enforcement, and intervention.

b. Historical Incidence of Manifested Threats

In addition to potential emotional fears of the unknown, articulable direct and indirect homeland security threats could and have been found to reside in opaque communities. Potential direct threats emanating from an opaque community may include the covert formation of a revolutionary militia, such as the Covenant, Sword, and Arm of the Lord (CSA), formed by Christian Identity follower James Ellison on a 224-acre property in northern Arkansas in 1976.⁵ It could likewise include a terrorist conspiracy or a doomsday plot such as those contrived by the Rajneeshee movement in their salmonella poisoning bioterror attack in Wasco County, Oregon in 1984 or the Japanese Aum Shinrikyo group’s numerous violent schemes during the mid-1990s. As with any criminal or terrorist conspiracy, operational security concerns for secrecy have motivated countless perpetrators to seek secluded areas as safe refuges from which to pursue their nefarious plans. Because governmental ability to detect preoperational planning and suspicious behavior indicative of future criminal or terrorist intent necessitates some degree of contact with such clandestine groups, overt or otherwise, opaque communities pose a recurrent and enduring problem to homeland security practitioners holding the mandate to detect, deter, and disrupt such activity.

⁴ Ibid.

⁵ Michael Barkun, *Religion and the Racist Right: The Origins of the Christian Identity Movement*, rev. ed. (Chapel Hill and London: The University of North Carolina Press, 1997), 216.

c. Effects on Disaster and Contingency Planning

Opaque communities also constitute potential latent threats to their surrounding jurisdictions through their nonparticipation in both disaster and contingency planning and emergency management exercises. First responders often have no visibility over the numbers and makeup of opaque community populations, which limits their ability to plan for emergency response, evacuations, or other life and safety contingencies. An opaque group existing outside public health monitoring programs could develop a viral pandemic threat through lack of necessary vaccinations, unhygienic practices, or other dangerous behavior. Opaque groups in wooded areas could fail to undertake countermeasures to ensure wildfire abatement and/or timely fire suppression, potentially endangering neighboring areas. Improper wastewater management, various other forms of pollution, the harboring of dangerous or diseased animals, and numerous additional potential hazards constitute threats with potential impact to adjacent jurisdictions. In addition, the lack of the ability to monitor and assess these threats or the capabilities and intent of the community's potential nefarious members, homeland security practitioners understandably perceive opaque communities as a largely inestimable challenge to their ongoing efforts to ensure for the safety and security of their entire area of responsibility.

From a broader homeland security perspective, regulatory infractions, quasi-criminal behavior, and socially negligent activities have been highlighted as potential areas into which the state's interest in rule of law and domestic order extends. Historically, opaque groups have been accused of failure to report unattended births and deaths, violation of zoning laws and construction standards, evasion of taxes, failure to enroll children in compulsory attendance school systems, and distributing controlled medications without prescriptions.⁶ Such comparatively "minor" infractions, even if pursued due an opaque group's cultural or religious beliefs, lifestyle practices, or lack of awareness rather than outright disregard for laws and regulations, could have significant impact on homeland security entities and the surrounding populace. Here again, it is less

⁶ Jean Swantko Wiseman, "Strategic Dissolution and the Politics of Opposition: Parallels in the State Raids on the Twelve Tribes and the FLDS," in *Saints under Siege: The Texas State Raid on the Fundamentalist Latter Day Saints* (New York and London: New York University Press, 2011), 204. 201–220

the articulable suspicion or knowledge but rather the potential that such activity may be occurring within an opaque community—particularly in the absence of an outlet to gather disconfirming evidence to the contrary—that frustrates governmental planning efforts with regard to such groups.

3. Collection Limitations

Given that homeland security practitioners, governmental agencies, and their civilian leaders have a valid requirement for situational awareness intelligence regarding opaque communities, the question arises as to what legal methods, sources, repositories, and protocols exist for obtaining such information.⁷ Two fundamental impediments quickly surface when exploring potential solutions. First, when dealing with a group or community that purposely eschews governmental contact, one must look either to methods for obtaining situational awareness regardless of the community's tacit agreement with or participation in its collection or to opportunities and processes where contact with agencies and officials is compulsory. Second, stakeholders must explore the availability and means of collecting, handling, processing, storing, and disseminating such information in a manner that is both legal and fully respectful of opaque community members' privacy, civil rights, and civil liberties. Because governmental actors are widely restricted from collecting information on the identities and activities of private persons, particularly those operating outside the public sphere, without a legal authorization to do so, prudent examination of any intelligence gathering activity is warranted prior to its initiation. Because officials and agencies may also be subject to blue-sky laws regarding governmental transparency, the Freedom of Information Act (FOIA), legislative and departmental oversight, and other information auditing and public disclosure procedures, official actors must pay strict attention to the purpose, form, protection, and potential political repercussions of any collection and storage activities.

⁷ Note that this thesis differentiates situational awareness intelligence from situational awareness information in that the former has undergone some type of analytic process to render assessments, judgments, conclusions, or other intellectual output for use by the consumer whereas the latter refers to the data or raw unevaluated observations used for intelligence production.

a. *Constitutionally Protected Activities*

The 1st Amendment to the United States Constitution guarantees freedom of religion and prohibits Congress from promoting one religion over another.⁸ The 14th Amendment ensures equal protection of the laws and stipulates that states shall not, “make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,” thereby preventing discrimination by state and local officials against classes of citizens.⁹ Together, these constitutional protections clearly restrict governmental intrusions into opaque groups, in particular those organized around common or communal religious practice. The very beliefs and societal expectations that motivate a given population to withdraw from its surrounding community may constitute 1st and 14th Amendment as well as general civil rights, liberties, and privacy protected behavior. Accordingly, the anomalous behavior or obscure ideologies that by their nature draw governmental attention and public scrutiny often enjoy enhanced protections from the same. In reviewing the legitimacy of any governmental interactional framework employed with regard to closed communities, the inviolability of these constitutionally protected rights and immunities must be respected and upheld, regardless of any perceived but uncorroborated threats or governmental preferences to the contrary. Though not itself an opaque community, the March 2012 acquittal by a federal judge in Michigan of five members of the Hutaree militia who had been charged with rebellion against the United States and seditious conspiracy demonstrates the degree to which even antisocial and threat-laced utterances by groups who clearly embrace violent ideologies enjoy constitutional free speech protections.¹⁰

b. *28 CFR Part 23*

United States Code of Federal Regulations Chapter 28, Part 23 is a guideline that governs criminal intelligence systems operated by or on behalf of state and local law

⁸ “First Amendment,” Cornell, accessed July 14, 2014, http://www.law.cornell.edu/constitution/first_amendment.

⁹ “14th Amendment,” Cornell, accessed July 14, 2014, <http://www.law.cornell.edu/constitution/amendmentxiv>.

¹⁰ Jerome P. Bjelopera, *The Domestic Terrorist Threat: Background and Issues for Congress* (Washington, DC: Congressional Research Service, 2013), 26–27.

enforcement agencies that derive funding from the Omnibus Crime Control and Safe Streets Act of 1968, as amended. First issued by the U.S. Department of Justice in 1980, the regulation was created to ensure rights and constitutional protections of individuals are protected.¹¹ The regulation defines a criminal intelligence system as, “the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information,” which in turn is defined as

data which has been evaluated to determine that it: (i) is relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and (ii) meets criminal intelligence system submission criteria.¹²

Moreover, the regulation stipulates:

A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.¹³

As the de facto national standard for sharing criminal intelligence information, 28 CFR Part 23 sets the operational standard for law enforcement entities collecting intelligence on opaque groups. However, the regulation does not govern agencies’ collection of “tips and leads” information, case and record management systems, or retention of criminal history records.¹⁴ Single-agency databases holding information that is not shared with multijurisdictional intelligence systems or outside agencies are

¹¹ Institute for Intergovernmental Research, “28 CFR Frequently Asked Questions,” *Criminal Intelligence Systems—Operating Policies (28 CFR Part 23)*, accessed July 14, 2014, http://www.iir.com/28CFR_Program/28CFR_FAQ.

¹² Institute for Intergovernmental Research, “28 CFR Part 23 Executive Order,” *Criminal Intelligence Systems—Operating Policies (28 CFR Part 23)*, accessed July 14, 2014, https://www.iir.com/28CFR_Program/28CFR_Resources/Executive_Order/.

¹³ Ibid.

¹⁴ Institute for Intergovernmental Research, “28 CFR Frequently Asked Questions.”

likewise exempt from 28 CFR Part 23 requirements.¹⁵ As such, 28 CFR Part 23, while not limiting the day-to-day activities of homeland security practitioners, does prevent existing law enforcement intelligence databases from being employed to collect information regarding opaque groups without criminal predicate. Though the regulation neither expressly applies to systems funded solely through state and local revenue sources nor extends to non-law enforcement state and municipal agencies, any official attempts to purposely design and fund intelligence systems simply to avoid 28 CFR Part 23 requirements could be perceived to be violating long established mechanisms for guaranteeing privacy, civil rights, and civil liberty protections.

c. Federal versus State Authorities

Though 28 CFR Part 23 regulates the intelligence collection activities of state and local entities, the measure does not apply to activities undertaken by federal authorities with regard to opaque groups. Various federal law enforcement and, to a lesser degree, intelligence agencies have a potential interest in monitoring activity and enforcing federal violations occurring in and committed by members of opaque groups. In particular, the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, and Firearms (BATF), and the Drug Enforcement Administration (DEA)—all within the U.S. Department of Justice (DOJ)—could have investigative interest in illicit activities occurring within opaque communities. Historically, the BATF has frequently become involved in federal enforcement actions targeting opaque groups due to the existence of potential and verified infractions of federal firearm regulations. However, with regard to intelligence collection and monitoring, the FBI possesses far greater authorities to collect information on opaque groups as described in *The Attorney General's Guidelines for Domestic FBI Operations*.¹⁶

According to this guidance, the FBI, “is an intelligence agency as well as a law enforcement agency,” whose “basic functions accordingly extend beyond limited

¹⁵ Institute for Intergovernmental Research, “28 CFR Part 23...a Guideline,” accessed July 28, 2014, http://www.iir.com/Documents/28CFR/Laymans_Guide_to_28_CFR_Part_23.pdf.

¹⁶ U.S. Department of Justice, Office of Attorney General, *The Attorney General's Guidelines for Domestic FBI Operations*, September 29, 2008, <http://www.justice.gov/ag/readingroom/guidelines.pdf>

investigations of discreet matters, and include broader analytic and planning functions.”¹⁷ In particular, a form of official inquiry referred to as an FBI assessment, “require(s) an authorized purpose but not any particular factual predication.”¹⁸ As, “detecting and interrupting criminal activities at their early stages, and preventing crimes from occurring in the first place, is preferable to allowing criminal plots and activities to come to fruition,” the FBI is widely authorized to conduct such broad detection activities, albeit with a minimum level of intrusiveness:

Hence, assessments may be undertaken proactively with such objectives as detecting criminal activities; obtaining information on individuals, groups, or organizations of possible investigative interest, either because they may be involved in criminal or national security-threatening activities or because they may be targeted for attack or victimization by such activities; and identifying and assessing individuals who may have value as human sources.¹⁹

Obviously, the scope of such intelligence gathering interest could easily extend to activities conducted within and by members of opaque communities, particularly given the FBI’s limited capacity to detect the incidence of federal crime within such groups and its organizational mandate to investigate such infractions.

In addition to DOJ agencies, numerous components of the U.S. Department of Homeland Security (DHS) have both statutory authorities and potential vested interests involving opaque groups. Both U.S. Citizen and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE) mandates would require these agencies to interact with opaque communities sponsoring, harboring, or including foreign national members or persons suspected of violating federal customs and immigration laws. The Federal Emergency Management Agency (FEMA) could have contact with opaque groups impacted by declared disasters or seeking homeland security grant funding. U.S. Customs and Border Protection (CBP) and the Transportation Security Agency (TSA)

¹⁷ Ibid., 9.

¹⁸ Ibid., 17.

¹⁹ Ibid.

would likewise have contact with members of opaque groups undertaking domestic or foreign travel.

Aside from contact, these DHS components may have with opaque community members during the course of fulfilling their normal duties, the DHS Office of Intelligence and Analysis (I&A) has a potential role in overcoming the situational awareness challenges posed by such groups. I&A acts as the department's conduit for providing federal support to the national network of state and local owned and administered fusion centers. These in turn, "provide interdisciplinary expertise and situational awareness to inform decision-making at all levels of government. They conduct analysis and facilitate information sharing while assisting law enforcement and homeland security partners in preventing, protecting against, and responding to crime and terrorism."²⁰ Though like the FBI, DHS I&A is member of the U.S. Intelligence Community (IC), and I&A has no federal investigative authority or mandate.²¹ Rather, I&A acts as the federal lead in sharing and integrating information between the IC and state, local, tribal, and territorial governments, as well as the private sector.²² I&A also acts as the departmental lead in managing the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI).²³ Given these duties, I&A potentially plays a key role in assisting state and local jurisdictions in detecting, assessing, monitoring, and supporting situational awareness related to any NSI suspicious activity or threat stream intelligence emanating from or associated with members of opaque communities.

²⁰ U.S. Department of Homeland Security, "State and Major Urban Area Fusion Centers," accessed July 15, 2014, <http://www.dhs.gov/state-and-major-urban-area-fusion-centers>

²¹ White House, "Executive Order 12333," December 4, 1981, <http://www.dni.gov/index.php/about/organization/ic-legal-reference-book-2012/ref-book-eo-12333>

²² Note that E.O.12333 and the *Interim Intelligence Oversight Procedures for the Office of Intelligence & Analysis*, dated April 3, 2008, dictate the scope and nature of I&A's intelligence activities related to U.S. persons. Due to this document's current designation as "For Official Use Only" (U//FOUO), additional discussion of I&A's interim authorities, potential contributions, and organizational protocols has been limited to allow unrestricted dissemination of this thesis. U.S. Department of Homeland Security, *Interim Intelligence Oversight Procedures for the Office of Intelligence & Analysis* (Washington, DC: U.S. Department of Homeland Security, 2008).

²³ U.S. Department of Homeland Security, "More about the Office of Intelligence and Analysis Mission," accessed July 15, 2014, <http://www.dhs.gov/more-about-office-intelligence-and-analysis-mission#1>

Though not presented as an exhaustive list, collectively, these federal agencies possess authorities and missions that have a high likelihood of placing them in a position to investigate, interact with, or collect and process information on opaque community members, organizational activities, and any homeland security related threats or issues emanating therefrom. Note that other federal agencies with tangential homeland security related missions such as the U.S. Census Bureau, U.S. Health and Human Services, and the Social Security Administration have separate but potentially relevant cause and authority to interact with and collect various forms of information on members belonging to closed groups.²⁴ For the purposes of this study, it should be recognized that numerous federal stakeholders have a mixture of statutory authorities, valid authorized purposes, and designated databases and repositories with potential relevance to the collection and maintenance of situational awareness intelligence on opaque communities. This thesis will discuss some of the issues and challenges to comprehensively leveraging these federal resources in support of state and local governments in later chapters.

²⁴ U.S. Census Bureau, “What We Do—About Us—U.S. Census Bureau,” accessed July 15, 2014, <https://www.census.gov/aboutus/>; U.S. Social Security Administration, “About the Social Security Administration,” accessed August 19, 2014, <http://www.ssa.gov/agency/>; U.S. Department of Health and Human Services, “About HHS,” accessed August 19, 2014, <http://www.hhs.gov/about/>

II. METHODOLOGY AND RESEARCH DESIGN

A. CASE STUDY METHOD

This thesis relies on a comprehensive analysis and review of historical instances of failed governmental interactions with opaque communities as a means of identifying the existence of oppositional frameworks employed by homeland security stakeholders. I will examine the following three domestic case studies of homeland security events involving opaque communities: the 1993 federal raid on the Branch Davidian's Mount Carmel compound near Waco, Texas; the 1985 Philadelphia Police Department raid of the MOVE commune; and the 2008 Texas raid on the Fundamentalist Church of Jesus Christ of Latter Day Saints (FLDS) Yearning for Zion (YFZ) Ranch in Eldorado, Texas.

These cases are relevant first and foremost because they had significant homeland security impact within respective jurisdictions. Two cases—Branch Davidians and MOVE—resulted in significant loss of life and destruction of property. The YFZ Ranch raid, though resolved without casualties, created significant challenges to law enforcement response that overwhelmed stakeholder capabilities. All of these cases presented unique and largely unforeseen challenges to investigating and responding agencies, as well as to their respective political leadership. The differing scope, ideological contexts, membership makeup, and associated jurisdictional settings buttress the assessed relevancy of these cases, as they provide a variety and depth that corroborates situational uniformity between all opaque community types. In addition, these cases were selected as they offer a mix of opaque communities located in both urban and rural settings, and each includes either a federal, state, or local homeland security stakeholder agency as the primary governmental actor, thereby allowing comparison across a spectrum of jurisdictional boundaries further enhancing their relevance in establishing a uniform assessment of stakeholder agency behavior. In all these cases, there exists a sufficient record of the societal context and basis for intervention underlying the manifested homeland security event.

B. SELECTION CRITERIA

These cases were selected based on three criteria: these groups were closed to non-members/affiliates/associates and either by explicit or implied means restricted member interactions outside of the group; these communities gathered at or relocated to a physical enclave where members established permanent domicile; and removal or recession of these groups from the surrounding community led to governmental intervention, duress-induced miscommunication and disaster, and/or gross mistrust and alienation from the surrounding community.

The use of these selection criteria for this case study sample set is based on the following. First, communities comprised of a restricted or closed membership groups, which do allow unrestricted access by members to their surrounding communities, have not generally created significant homeland security challenges. As mentioned in the definition section above, many sub-cultures potentially constitute groups that exhibit unique ideologies, cultural practices, or other barriers to membership or effortless social interaction by non-members. However, most such groups' members freely communicate with non-members and their surrounding community at will: they associate without integrating, a distinction that further illuminates the unique challenges that completely opaque communities engender.

Second, a focus on opaque groups that withdrew to a distinct, secluded physical location at which members reside was deemed a limiting criterion because this appears to be a sufficiency prerequisite for relevance to homeland security situational awareness and planning. Groups whose members congregate but do not cohabitate do not constitute separate constituencies for homeland security stakeholders, as these individuals and their families are subsumed by the existing communities in which they live for the purposes of disaster planning, situational monitoring, and provision of essential services. Only by establishing a physically separate enclave, compound, commune where members reside—one neither over which first responders and governmental entities have full visibility nor with which they maintain routine communication—does an opaque community frustrate homeland security processes by presenting a geographic void for detection, deterrence, disruption, response, and recovery activities.

Thirdly, only communities whose opaque nature and withdrawal have resulted in significant homeland security events (primarily enforcement actions, safety and welfare interventions, or tragedies) precipitated by the group's distrust of government or compelled by political pressure from their surrounding communities are being selected as case studies. The reason for this is twofold. First, occurrence of such events is what constitutes this topic's relevance to the discipline and provides the potential policy impact motive for critical study. Second, it appears the reasons such groups withdraw and establish themselves as "opaque" is often intrinsically linked with their distrust of or disassociation from the surrounding community and, perhaps more importantly, their rejection of governmental contact, sovereignty, and oversight. An opaque community's disinclination to interact with public safety, first responder, emergency management, and other governmental agencies is possibly the primary causative factor for its constituting a homeland security threat (i.e., it likely becomes a threat to homeland security through this disassociation). As such, by selecting cases that enable an exploration of this link between the basis for a closed community's withdrawal and non-cooperation in homeland security activities and a subsequent tragedy or event that was predicated by this behavior, a more thorough analysis of the aggravating communicative barriers is possible.

This thesis has purposely not focused on a collection of related but incompatible cases involving closed or clandestine groups or organizations that either do not fulfill one or more of the above selection criteria or which are deemed anomalous for other reasons. Religious cults such as Heaven's Gate (San Diego, 1997) or Solar Temple (Canada and Switzerland, 1990s) were closed groups that allowed limited outside interaction by members, pursued some isolated cohabitation, and experienced tragic dissolutions. However, due to the relatively small size of these groups, their failure to interact with a surrounding community and retreat to a single large residence or property does not fulfill the sufficiency test for homeland security relevancy. Likewise, cases involving a very small number of individuals, an extended family, or a conspiratorial group (such as the 1992 Weaver family standoff with the FBI in Ruby Ridge, Idaho or the 1983–84 crime spree committed by Robert Jay Mathews and his group The Order) is assessed as unproductive, as such groups are deemed too small and isolated to offer constructive

lessons to a broad set of homeland security practitioners. Note that both the BATF raid of Ellison's CSA Zarephath-Horeb community in 1985 and the 1996 FBI standoff with the Montana Freeman at the "Justus Township" near Jordan, Montana constitute compelling models of successful interventions into opaque communities that avoided violence and bloodshed, albeit ones that did not outright avoid such altercations, as discussed in later chapters.²⁵

Finally, I purposely did not select cases that occurred in foreign countries due to the existence of uncontrolled variables in these jurisdictions. Insights gleaned from problematic interventions into foreign opaque communities, such as those associated with the Aum Shinrikyo group in Japan, the Movement for the Restoration of the Ten Commandments of God in Uganda, the Doukhobors of British Columbia, or the Ogyen Kunzang Choling Tibetan Buddhist community near Castellane, France, would seem to have domestic applicability, but as these cases fall under a vastly different set of laws and social conventions, they were assessed as too incompatible to provide reliable case-derived comparative evidence. Though certainly a significant opaque community with profound social dynamic relevance to homeland security studies, Jim Jones' People's Temple movement was similarly rejected as a case study due to the group's relocation to Guyana in the late 1970s. Though primarily composed of U.S. national members, the extra-territorial circumstances surrounding the Jonestown tragedy prevent its full exploitation as a case study relevant to domestic homeland security efforts.

C. INFORMATION SOURCES

This thesis utilizes two forms of scholarly literature for this case study: governmental case reports and secondary sources. Although some of this literature draws from primary sources, such as previous or current group members, eyewitnesses, absconders, and government stakeholder officials, the majority of the case information is only available through these secondary sources.

²⁵ Lane Crothers, *Rage on the Right : The American Militia Movement from Ruby Ridge to Homeland Security* (Rowman & Littlefield: Lanham, MD, 2003), 153–54; Barkun, *Religion and the Racist Right*, 216.

D. STRUCTURED FOCUS METHOD AND VARIABLES

This study examines the underlying issues and challenges that opaque communities present to homeland security practitioners, integrating evidence from the individual cases according to a set of identified common underlying themes and issues affecting governmental stakeholders that appear to permeate all of the selected cases. These commonalities are grouped and examined according to a structured focused method in which the following influences affecting official decision making (outlined below) are examined for potential relevancy to the preexistence of default oppositional frameworks among governmental actors and ultimate success or failure of the governmental interaction and intervention with opaque communities:

- I. Community and political pressure on local and state governments to intervene into the activities and potential threats emanating from opaque groups due to:
 - a. Presumption of intending absconders
 - b. Projected, unfounded concern for women and children members and/or
 - c. Suspected activities that offend the prevailing social conscience or preface illegality
- II. Emergence among officials of a pervasive, perceived threat emanating from the community due unavailability of situational awareness, and
- III. The danger of self-fulfilling group narratives due to amplified miscommunication compounded by governmental intervention under duress

In addition to the aforementioned framing issues that permeate governmental interaction with opaque communities, outreach strategies that pursued constructive dialogue, educated by an understanding of ideological, eschatological, and worldview differences, appears to be the independent variable that had the greatest effect on the outcome of each case. These cases enlighten an inquiry into this key aspect both in terms of actions that can be taken in a steady state or period of tranquil coexistence as well as immediately before and during instances of compelled interaction or duress through forced governmental intervention. By highlighting the context to the community/government relationship (or lack thereof) as viewed by each side through the lens of these cases, this study illuminates patterns and correlative factors that transcend

each of these cases individually and have the potential to inform future homeland security endeavors.

E. PURPOSE AND GOALS

Through critical inquiry of these communication failures between homeland security officials and opaque community leadership in a variety of urban and rural settings throughout the United States over the last 35 years, this research method provides a strong basis for exploration of the convergent underlying themes that engender divergent contextual frameworks between governmental and community actors. Though the communities' makeup, ideology, and tendencies towards violence differ, their common opaque nature present contextual similarities that can be applied to all such groups, regardless of their unique characteristics. By comparing and contrasting the various outcomes of these cases through the optics of the aforementioned frameworks, this inquiry provides a unique insight into the homeland security academic canon that has topical relevancy and will enlighten and enhance future preparedness, prevention, and response efforts.

The larger goal is to provide the reader with a better understanding of the broad homeland security challenges these themes create in dealing with an opaque community in a given jurisdiction. Rather than simply dissecting the success or failure of intervention strategies targeting isolated instances of opaque communities, this study will determine if the above themes are indeed common phenomena applicable to a broad range of closed groups, independent of their given ideological background, location, makeup, or stated purpose. Based on the findings, later chapters offer some recommendations for future interactions with opaque communities as well as highlight some additional focus areas for future inquiry.

III. LITERATURE REVIEW

A. OVERVIEW

The existing body of literature regarding homeland security stakeholder oppositional frameworks related to opaque communities is limited in both breadth and depth. Two broad veins of potentially applicable literature tangentially address such communities but fail to specifically identify a group's opacity as a critical impediment to homeland security efforts. Instead, relevant studies tend to approach opaque communities as either community policing "special need" groups or as sociological case studies. A phenomenon that appears to be less comprehensively explored is the framework by which the governmental actors themselves approach closed or opaque communities, regardless of the ideology, new religious movement beliefs, or worldviews to which its inhabitants subscribe.

1. General Literary Veins

The first and much broader concept of community policing has been the focus of an extensive canon of both theoretical and operational study. Police engagement strategies, such as officer visibility, counseling, public education, and apprehension efforts, are highlighted as effective alternatives to enforcement-only contact between law enforcement and citizens, with effective communication identified as a key enabler in their implementation.²⁶ This analysis typically identifies the niche or intra-community ethnic, cultural, and language barriers facing public safety and law enforcement agencies as challenges that can be substantially overcome through cultural awareness and via proactive, tailored public outreach at the interpersonal level in interactional venues absent enforcement or investigative agendas. It should be noted that such efforts require voluntary reciprocity and cooperation from the policed constituency, and the existing literature generally neglects discussion of groups that purposely avoid or reject such contact.

²⁶ Mary S. Jackson, *Policing in a Diverse Society: Another American Dilemma* (Durham, NC: Carolina Academic Press, 2006), 16–17.

The second vein largely examines opaque communities as a subset of new religious, alternative lifestyle, fundamentalist, anti-government, or other variant of obscure social phenomena. This body of literature emerges from the underlying disciplines of sociology, religious studies, and psychology. The existing canon thus tends to view a group's opacity as a facet of the larger ideological, cultural, and psychosocial undercurrents to an examined community's nature and behavioral makeup rather than as an independent causational factor underlying tragic governmental interventions. Many opaque groups apparently choose to withdraw from society due to their unique eschatology, fear or rejection of outside influence, or collective desire to pursue activities free from public scrutiny or reproach. A community's attribute of opacity often then appears to be strongly associated with or stem from its foundational or underlying belief set. In particular, scholars of both new religious movements and sociology have focused a significant body of critical inquiry on millenarian groups, largely because groups holding such beliefs may be predisposed to fulfilling their perceived role in intractable, apogean confrontations against governmental entities. As such, much of the relevant literature dealing with closed groups focuses on contributing or accompanying millenarian, new religious movement, or anti-governmental thought and belief.

2. Relevance of Existing Literature

Consequently, though both community policing and sociological thought and explanatory models are useful in dealing with opaque communities, they appear to fail a sufficiency test in providing explanations of homeland security stakeholder frameworks vis-à-vis opaque communities. As community policing requires recurring, voluntary interaction between government—primarily law enforcement—and a policed constituency, its applicability is fundamentally constrained when dealing with *physically* inaccessible or *purposely* secretive groups. Sociological studies certainly illuminate an opaque group's worldview and clarify cultural and communicative barriers between it, the surrounding community, and governmental actors tasked with providing public safety services to both. However, these studies largely fail to explain the impact a group's opacity has on officials absent the communication challenges stemming from its underlying ideological basis and accompanying worldview. Collectively, the existing

literature provides analytic context to the identified hypothesis regarding flawed oppositional frameworks, but it fails to adequately identify the unique causative role the opaque nature of these groups has played in creating challenges to homeland security practitioners. In short, neither areas of study identify homeland security stakeholders' requirements for situational awareness intelligence as a prime motivator for seeking interaction with or visibility over the encountered opaque community. Portions of both veins of inquiry may, however, be useful in explaining the framework according to which these stakeholders' approach opaque community challenges. After introducing some of the current critical thought in this area, a review of the applicable literature involving historical case studies involving opaque groups will be highlighted.

B. DIVERGENT WORLDVIEWS

Millennialism, in particular, and violence stemming from chiliastic beliefs is the focus of much critical study with applicability to opaque groups. Wessinger offers a typology for violent apocalyptic religious groups useful to homeland security stakeholders in approaching and interacting with such groups. She identifies millenarian beliefs as either catastrophic or progressive and categorizes groups as exhibiting fragile, assaulted, or revolutionary motivational traits, contextualized by members' immutable "ultimate concern[s]." ²⁷ By rationalizing any organizational embrace of violence on the existing mixture of internal group turmoil and members' perception of external threats, Wessinger presents a model with which to successfully approach millennial groups when seeking resolution of conflict. This typology is especially applicable to opaque communities, and Wessinger uses domestic case studies such as the Branch Davidians, Peoples Temple, and Chen Tao in demonstrating its utility. She identifies a failure to recognize millenarian groups' worldviews and properly understand and contextualize negotiation and conflict resolution dialogue based on members' ultimate concerns as shortcomings among responding officials. ²⁸ However, this framework is intrinsically group-centric rather than situational, and it does not comprehensively address homeland

²⁷ Catherine Lowman Wessinger, *How the Millennium Comes Violently: From Jonestown to Heaven's Gate* (New York: Seven Bridges Press, 2000), 24.

²⁸ Ibid.

security stakeholder framework limitations in interacting with closed groups prior to forced intervention scenarios.

Sullivan, with specific reference to the Branch Davidians, focuses on misunderstanding or lack of true empathy among law enforcement with regard to closed religious groups. He suggests that it is by discounting religious motivations or context that law enforcement agencies fail to establish constructive dialogue during interventions into criminal activity perpetrated by religious groups. He notes, “the risk is that, in trivializing religion as a motivation, government officials diminished their capacity to understand the motives and actions of citizens.”²⁹ The often devout convictions of millenarian closed communities certainly present unique challenges to such law enforcement operations but are arguably only one of multiple information deficit challenges faced by homeland security stakeholders when dealing with opaque groups. Just as officials’ ignorance of religious belief is detrimental to establishing inter-group dialogue, the lack of knowledge of a group’s activity, intent, capabilities, and makeup present additional challenges in assessing potential threats from such a community. Though Sullivan’s recommendation for the development of greater religious knowledge among law enforcement agencies constitutes perhaps the most critical aspect to this suite of communicative barriers, it both fails the sufficiency test and disregards the resultant effects that officials’ adoption of oppositional frameworks plays in dealing with opaque communities.

Newport does not address opaque communities directly separate millenarian ideologies and their impact on police crisis negotiations. However, he does highlight the dangers for totalitarian control by a group leader claiming privileged access to, “the source of legitimization of his or her authority.”³⁰ He notes, “In a religion in which access to the source of authority is closed to all but the leader, the actions of the leader cannot easily be questioned by followers, since no one else has access to the source of the

²⁹ Lawrence E. Sullivan, “‘No Longer the Messiah:’ U.S. Federal Law Enforcement Views of Religion in Connection with the 1993 Siege of Mount Carmel near Waco, Texas,” *Numen-International Review for the History of Religions* 43, no. 2 (1996): 220.

³⁰ John P. Newport, “Cults, Religious Conflict, Religious Liberty and Frameworks of Order,” *Journal of Police Crisis Negotiations* 2, no. 1 (2002): 10.

revelation.”³¹ With specific reference to the Branch Davidians, Newport likewise stresses the importance of understanding eschatological beliefs in “end times,” “signs,” and apocalyptic themes when dealing with groups following such ideologies, as such knowledge will prevent authorities from inadvertently manifesting prophesized intrusion by the “forces of evil.” He notes,

As Waco has shown, violence is a product of interaction and therefore may be partially controlled by the state. The state may not be able to change a group’s doctrinal propensities, but it can control its own reactions, and in doing so may exert significant leverage over the outcome...If, on the other hand, they naively become co-participants in millenarian’s end-time script, future Wacos will be not merely probable; they will be inevitable.³²

Though Newport points out the need for “‘worldview’ interpreters” and highlights belief in continuing revelation by living prophets as issues for governmental entities dealing with arcane or unconventional religious movements, he does not extend these interactional best practices to a broader understanding of the challenges posed by secular as well as religious closed communities. He likewise does not identify officials’ own operative assumptions and desires for situational awareness as impediments to open and constructive dialogue with these groups prior to situations of duress.

C. SOCIOLOGICAL EXPLANATIONS FOR OPACITY

Though Newport restricts this discussion primarily to organizations grouped around strong religious beliefs, he does offer commentary on the phenomenon of survivalist groups in general that is equally applicable to opaque communities that harbor isolationist tendencies:

Survivalist groups are defensive communities designed to keep at bay a world they despise and fear. They often deny the legitimacy of government and other institutions. For some, the reign of antichrist has already begun. For them, no social contract can exist between themselves and the enemy—the state. Their sense of besiegement and their links to paramilitary subcultures virtually guarantee that, no matter how

³¹ Ibid.

³² Ibid., 14.

committed they may be to lives of isolation, they will inevitably run afoul of the law. The flash-point could involve firearms regulations, the tax system, or the treatment of children.³³

This statement encapsulates many of the issues critical though not singular to opaque communities' interaction with homeland security stakeholder agencies, particularly at the county and municipal levels. Though Newport correctly characterizes a group's withdrawal from society as the basis for any oppositional behavior, resistance, or open conflict, he accentuates a group's underlying ideology as the sole causative factor rather than identifying the operational and interactional constraints its closed nature presents to law enforcement as an additional catalyst for failed dialogue and organizational belligerency.³⁴

In *Learning Lessons from Waco*, Docherty deconstructs the societal relationship between the Branch Davidians and their surrounding community, noting that material, social, and symbolic resources all contribute to potential misunderstanding between these entities.³⁵ In particular, she notes that opponents frequently utilize "atrocities tales" as symbolic activity to discredit unpopular religions. Docherty suggests, "alleged atrocities usually fall under the headings of psychological violation of personal freedom and autonomy, physical abuse of members, and disregard for conventional gender and familial relationships."³⁶ By alleging that criminal activity and violent acts were being committed, opponents successfully employ atrocity narratives to attract the attention of law enforcement, thereby earning allies in their efforts against the targeted group. Though Docherty's analysis explains one of the key aggravating factors affecting official oppositional frameworks regarding opaque groups, it does not unearth the underlying motivations for illuminating the true actions and intentions of such groups.

Without specific reference to closed communities involving religious minorities, Wright and Richardson suggest there exists a compelling argument that social intolerance

³³ Ibid.

³⁴ Ibid.

³⁵ Jayne Seminare Docherty, *Learning Lessons from Waco: When the Parties Bring Their Gods to the Negotiation Table* (Syracuse, NY: Syracuse University Press, 2001), 35.

³⁶ Ibid., 37.

and a resulting support for governmental repression of minority faiths exists.³⁷ The authors offer the Fundamentalist Latter Day Saints as a case study, as well as juxtapose the group against seven other instances of minority religious movements that have suffered governmental enforcement and intervention efforts disproportionate to suspected offenses or of questionable legality. They conclude that there exists a pattern of government raids against new religious movements, obscure sects, and groups that are stigmatized due to such groups' alternative social or cultural practices and beliefs. Though they do not limit their study to opaque groups, they do concede additional challenges occur in dealing with closed religious minorities. However, in their final analysis, Wright and Richardson attribute pernicious interventionist tendencies to in/out group and minority/majority social dynamics involving state intolerance and discrimination more than officials' operational desire for situational intelligence and elevated perceptions of threat in the absence of interaction and communication with opaque groups.³⁸

In examining the negative repercussions of failed government-community relations, Bromley describes the phenomenon of the “dramatic denouement” as a method of understanding why and how religious groups, including isolated ones, adopt violent behavior. He argues such transcendent episodes of intensified conflict arise from a situation of “progressive polarization,” in which parties increasingly become mutually subversive, eventually achieving a relational boiling point that culminates in open conflict. Bromley comes perhaps closest to outlining a framework to explain how organizational secrecy and community opacity contribute to the community/governmental polarization, noting,

Secrecy generally produces greater volatility and unpredictability in conflict situations. Given that the parties already assess one another as engaged in subversive conduct, secrecy renders presumably hostile intentions and actions opaque. The party discovering covert action becomes apprehensive that even more subversive conduct may remain

³⁷ Wright and Richardson, “Introduction,” 16.

³⁸ Ibid.

concealed; the concealing party becomes anxious as time passes and the amount of undiscovered clandestine activity mounts.³⁹

Although this rubric is interchangeable between actors, it does not adequately account for the unique added responsibilities and accompanying sense of urgency that the homeland security mission appends to any governmental actor's agenda. Nevertheless, this characterization of a self-amplifying mutual perception of increased threat illuminates the challenges that opacity and accompanying presumed or intentional secrecy adds to any interaction between homeland security stakeholder organizations and closed groups within their jurisdiction.

D. RETROSPECTIVES AND BIOGRAPHIES

Looking beyond millenarian dogma and psychosocial explanations for opaque community behavior, there exists a significant body of biographical literature examining tragedies and failed governmental interactions with closed communities. However, this material is generally limited to explanatory, retrospective analysis of singular events rather than being holistic in nature or providing strategic insights into the overarching phenomena of divergent frameworks across a broad range of communities with varying ideological underpinnings. Scholars and authors have devoted critical attention primarily to three facets of the events surrounding such historical cases: biographies of organizational leaders, exploration of a group's underlying theology/ideology, and examination of the legitimacy of governmental actions. These themes are then dissected with the goal of describing and analyzing their collective nature and interplay as it contributed to misunderstanding and tragic outcomes. Research and critical inquiry has been compiled in government investigations, lengthy historical compilations, legal journals, and theses, as well as a number of scholarly articles and biographical works of popular non-fiction. Because this literature is largely descriptive rather than prescriptive in nature, there appears to be neither existing schools of thought nor major contributors who have established recognized scholastic frameworks or dominant theoretical models.

³⁹ David G. Bromley, "Dramatic Denouements," in *Cults, Religion, and Violence*, ed. David G. Bromley and J. Gordon Melton (Cambridge: Cambridge University Press, 2002), 27.

1. Official Reports

Official government reports constitute the first and perhaps most reliable factual accounts of official interventions into closed communities. The issues arising from and surrounding the two most tragic episodes involving closed communities—the 1993 federal raid on the Branch Davidian compound near Waco, Texas and the 1985 siege of the MOVE headquarters by Philadelphia authorities—have been the subject of numerous official inquiries. The failed BATF raid and FBI siege of the Branch Davidian compound at Waco has received significantly more official attention, though much of the existing studies are likewise critical factual accounts rather than forward-looking analyses. Both the Departments of the Treasury and Justice produced comprehensive reports detailing their respective agencies’ involvement in the Mount Carmel tragedy.⁴⁰ Because BATF was the lead investigative agency prior to the standoff at Mount Carmel, the Treasury report in particular provides pre-event information and background that regarding situational awareness and intelligence gathering activities undertaken by the agency.⁴¹ An additional investigation by the 104th Congress into the activities of all federal law enforcement agencies’ actions towards the Branch Davidians provides perhaps the least department-biased accounting of federal contact with the group.⁴² This report does offer evaluative critique of BATF and FBI actions, but does not explore application outside future federal tactical engagements. Collectively, as these reports are themselves investigatory in nature; they likewise concentrate almost exclusively on the official actions taken during these particular events. As such, they provide limited commentary on agency action or policy in general as it relates to monitoring closed communities for indicators of threat escalation or other homeland security issues.

⁴⁰ U.S. Department of the Treasury, *Report on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell also known as David Koresh* (Washington, DC: U.S. Government Printing Office, 1993); U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco, Texas February 28 to April 19, 1993*, (Washington, DC: U.S. Government Printing Office, 1993).

⁴¹ U.S. Department of the Treasury, *Report on the Bureau of Alcohol, Tobacco, and Firearms*.

⁴² U.S. House of Representatives Committee on Government Reform and Oversight and U.S. House of Representatives Committee on the Judiciary, *Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians*, 104 Cong., 13 (1996), <http://www.gpo.gov/fdsys/pkg/CRPT-104hrpt749/html/CRPT-104hrpt749.htm>

Additional federal reports on military assistance at Waco and the BATF's use of force polity provide critical inquiry into tactical issues during the raid and standoff.⁴³ Likewise, a number of congressional hearings, Congressional Research Service (CRS), and U.S. General Accounting Office (GAO) reports regarding domestic extremism offer tangential commentary on opaque communities.⁴⁴ Though such reports shed additional light on federal perspectives and understanding of these general phenomena, they do not examine the frameworks employed by federal agencies and officers when interacting with opaque groups in particular, nor do they identify community opacity as an impediment to homeland security efforts in and of itself. In short, the existing federal investigative literature on this community focuses on reactive, not proactive, governmental activity, and designates a rendering of the facts and determination of fault as its primary goals.

With regard to non-federal interventions into closed communities, official reports and hearings were held on both the city of Philadelphia's disastrous siege of the MOVE compound in 1985 and Texas Department of Public Safety's raid on the Yearning for Zion Ranch in 2008. In particular, Philadelphia held a series of public hearings regarding the MOVE siege. Additionally, the Philadelphia Special Investigation Commission was formed to independently investigate the city's actions surrounding the disaster and published its findings in a March 1986 report.⁴⁵ Following the YFZ Ranch raid, the Texas Department of Family and Protective Services issued a self-assessment report on its investigative activities at Eldorado.⁴⁶ Similar to the federal reports, these official accounts of governmental actions, though comprehensive, are investigative in nature and

⁴³ U.S. General Accounting Office, *Military Assistance Provided at Branch Davidian Incident*, GAO/NSIAD/OSI-99-133 (Washington, DC: U.S. General Accounting Office, 1999); U.S. General Accounting Office, *Use of Force ATF Policy, Training, and Review Process Are Comparable to DEA's and FBI's*, GAO/GGD-96-17, (Washington, DC: U.S. General Accounting Office, 1996).

⁴⁴ Bjelopera, *The Domestic Terrorist Threat*; U.S. Government Accountability Office, *Countering Violent Extremism—Additional Actions Could Strengthen Training Efforts* (Washington, DC: U.S. Government Accountability Office, 2012).

⁴⁵ Philadelphia Special Investigation Commission, *The Findings, Conclusions and Recommendations of the Philadelphia Special Investigation Commission* (Philadelphia: Philadelphia Special Investigation Commission, 1986).

⁴⁶ Texas Department of Family and Protective Services, *Eldorado Investigation*.

focus primarily on establishing the facts and circumstances related to events rather than delving into official's viewpoints or considering potential future interactions with similar community subsets. The Philadelphia Commission report does, however, recommend changes for the city's departmental operations and structure, though these are neither opaque community specific nor holistic in nature.

2. Scholarly Works, Biographies, and Popular Literature

In contrast to the limited official studies on these events, the canon of both scholarly and popular literature dealing with these tragedies and the groups involved is substantial. The majority of this literature was created in the years immediately following the respective tragedies, though Waco in particular continues to be the subject of more recent studies. The Waco siege and the Branch Davidians have received much attention in the popular canon with well over 80 books having been written on the siege, the Davidians themselves, and issues surrounding the federal response. Four substantial books chronicling the MOVE tragedy were written during the decade following the tragedy, though recent mention of the siege is primarily limited to media commentary normally prompted by the remaining MOVE members' parole hearings and scheduled releases from incarceration.

In general, this popular non-fiction typically offers a chronological account of the events while providing background and depth to the differing perspectives of the actors, often through personal vignette. However, as with media accounts, such texts are more descriptive than prescriptive in their final analysis and offer few general recommendations for future avoidance of such miscommunication. Critical comprehensive studies of the Waco tragedy, such as those by Reavis, Tabor and Gallagher, and Docherty, dissect the events leading to the tragedy, but they fail to extend lessons to a broader homeland security concept of closed community interaction.⁴⁷ Throughout such works, the contentious government/closed community dynamic is premised on negotiation towards peaceful resolution of an existing legal dispute rather

⁴⁷ Dick J. Reavis, *The Ashes of Waco: An Investigation*, (New York: Simon & Shuster, 1995); James D. Tabor and Eugene V. Gallagher, *Why Waco?: Cults and the Battle for Religious Freedom in America*, (Berkeley: University of California Press, 1995); Docherty, *Learning Lessons from Waco*.

than on preventative mutual understanding and recognition of “tripwire” developmental events. Though not exhaustive, these works demonstrate the tendency of lengthy analyses on closed communities to focus almost exclusively on the siege/negotiation/attempted de-escalation phase of governmental-community interaction rather than on the preventative, “left of bang” area of situational awareness and development of mutual understanding.

A not insubstantial body of popular and some scholarly literature exists on the closed FLDS communities in both Eldorado and Short Creek. The majority is comprised of human-interest, popular non-fiction involving personal, often sensationalized accounts from absconders and excommunicated members. This literature, though useful in providing an inside view of this particular closed community, appears to be limited to individual stories and does not address the group as part of a larger opaque community phenomena. Brower, in his 2011 book *Prophets Prey*, does delve into the aspects of monitoring and establishing lines of communication with the group, albeit primarily with a view at assisting absconders and attempting to obtain information on the FLDS leader Warren Jeffs.⁴⁸ Wright and Richardson edited a recent compendium of critical essays on the social, legal, and societal issues surrounding the 2008 FLDS raid that does provide scholarly insight into the object of study and offers limited comparative study with both the Waco and Jonestown tragedies.⁴⁹ The remaining works appear to focus on polygamy and the psychological aspects of being born into a closed community with a fundamentalist belief system rather than the challenges the group poses to homeland security stakeholder agencies.

Recent scholarly attention to child custody and family law issues emanating from closed communities that emerged following the 2008 Texas raid of the FLDS YFZ Ranch offer legal context to the opaque community phenomenon. A significant number of legal studies examine the legitimacy of governmental interests in child protection and individual versus community-wide removal actions. Since 2008, Barlow, Nilson, and Ross have all published legal critiques of Texas’ judicial basis for the removal of over

⁴⁸ Sam Brower, *Prophets Prey: My Seven-Year Investigation into Warren Jeffs and the Fundamentalist Church of Latter-Day Saints* (New York: Bloomsbury, 2011).

⁴⁹ Stuart A. Wright and James T. Richardson, *Saints under Siege* (New York: New York University Press, 2011).

400 children from their families. Although these critiques note some of the difficulties of governmental monitoring of children's domestic well-being in closed communities (e.g., lack of reporting from neighbors, no contact with public schools), these issues are only mentioned in passing and receive comprehensive examination as a pervasive opaque community challenge from none of the authors. Primarily, these works explore the legal basis and repercussions to well-intentioned social service enforcement efforts targeting closed communities that were found to lack sufficient legal basis, noting that established judicial processes for the intrusion into or severance of parental rights face unique barriers within closed community settings enjoying freedom of religion protections, as will be discussed later.⁵⁰

E. THESES

Regarding critical inquiry into the ideological dangers often stemming from closed communities, a number of recent theses provide commentary on the need, if not the methods, for maintaining situational awareness of activity within opaque communities. This literature looks more to inherent dangers associated with a community's collective set of beliefs—an aspect that does have bearing on the larger task proposed in my inquiry. In his thesis, "Imagining the Impossible: Insurgency in the USA," Sauer identifies potential societal changes that could lead to closed communities in the form of domestic secessionist groups. Sauer notes, "Preemptive counters to mobilizing conditions may be a better alternative than the United States government enacting ill-prepared reactive measures in response to violence perpetrated by any such group," but he fails to provide suggestions on how this might be accomplished.⁵¹ Baldoza confronts right-wing extremism from a collective behavior perspective that, though not

⁵⁰ Keith, W. Barlow, "Can They Do That?:" Why Religious Parents and Communities May Fear the Future regarding State Interests and Custodial Law," *Brigham Young University Law Review* 2012, no. 1 (2012): 281–312;

Brittany Nilson, "Yearning for Zion Ranch Raid: Lowering the Standard of Proof for the Termination of Parental Rights," *Brooklyn Law Review* 305 (2009–2010), 75; 305–43.

Catherine J. Ross, "Legal Constraints on Child-Saving: The Strange Case of the Fundamentalist Later-Day Saints at Yearning for Zion Ranch," *Capital University Law Review* 37: (2008–2009), 361. 361–410.

⁵¹ Eric F. Sauer, "Imagining the Impossible: Insurgency in the U.S.A." (master's thesis, Naval Postgraduate School, 2011), 58.

opaque community specific, does highlight the need to address ideologies or groups in a proactive, non-confrontational manner.⁵²

In their thesis “Convergence and Religious Terrorism in America,” authors Ashby and Brinsfield place instances of domestic religious terrorism within their historical context, highlighting the culmination of social and enabling contributing factors.⁵³ Though not exclusive to closed communities, their recommendations for detecting homeland security threats by monitoring group leadership, membership, and converging social factors are demonstrated as having profound applicability to this subset. Wong, in his thesis “Christian Extremism as a Domestic Terror Threat,” likewise frames domestic terrorist activity with examples of extremist religious belief used as justification for this violence. His recommendations include, “sustainment of negotiation-oriented tactics as the primary option for crisis situations, enforcement of existing anti-militia laws, promotion of racial and religious tolerance, and increased community involvement.”⁵⁴ Though the latter two suggestions seem applicable to development of opaque community frameworks, process specificity and implementation steps are apparently left to future scholarship.

F. EXISTING POTENTIALLY APPLICABLE FRAMEWORKS

Scholarly articles by Arredondo and Szubin, Jensen and Gregg directly address the challenges facing governmental entities in maintaining constructive dialogue with opaque communities. Arredondo critiques systemic enforcement missteps that target closed religious groups, proposing a model that “seeks to establish partnerships and positive contacts with the closed groups while simultaneously insisting on the enforcement of regulations and laws, even where such laws contravene the religious

⁵² Arnold C. Baldoza, “Assessing Domestic Right-Wing Extremism Using the Theory of Collective Behavior” (master’s thesis, Naval Postgraduate School, 2009).

⁵³ Christopher B. Ashby and Gregory S. Brinsfield, “Convergence and Religious Terrorism in America” (master’s thesis, Naval Postgraduate School, 2004).

⁵⁴ Frederick D. Wong, “Christian Extremism as a Domestic Terror Threat” (master’s thesis, United States Army School of Advanced Military Studies, 2011), 46.

beliefs of a group.”⁵⁵ This is one of the few studies that includes recommended initiatives to create a “viable policing model;” however, Arredondo falls short by failing to elaborate how such enforcement might be useful in systematic detection, monitoring, and threat analysis functions by the jurisdiction employing their use. Szubin, Jensen and Gregg offer the actual example of successful engagement between the Garland, Texas Police Department and a local congregation of the Taiwanese Chen Tao movement in the late 1990s as a paradigm for government-initiated outreach and interaction. Though the article does propose a pre-enforcement, holistic engagement strategy model for approaching closed groups (a designation they restrict to groups imprecisely characterized as “cults”), it fails to address various contingencies, such as a group’s lack of reciprocal interest in interaction with government actors, that might be covered in a comprehensive analysis of the topic.⁵⁶

G. GAPS IN CURRENT LITERATURE

Of note, there is little scholarly literature available that identifies potential threats posed by closed communities beyond violence and inherent social dangers. There is a scarcity of critical inquiry into such topics as providing governmental services to closed communities during natural disasters, ecological and epidemiological threats stemming from opaque groups, and potential zoning, water right, public use, and vital record burdens posed by un-integrated population sets within a jurisdiction. Although a review of such topics would seem germane to schools of public policy and civic affairs, urban and regional planning, and homeland security disciplines, it is possible that the low incidence and individualized nature of closed communities have frustrated their development as a separate focus of study to these fields. Only in those cases where the ideologies and practices of opaque communities have resulted in illegal activity and subversive or self-destructive behavior by group members or have revealed practices that

⁵⁵ Tamara N .Lewis Arredondo, “Toward a Viable Policing Model for Closed Religious Communities,” *American Journal of Criminal Law* 35, no. (2008), 107. 107–144.

⁵⁶ Adam Szubin, Carl J. Jensen, and Rod Gregg, “Interacting with ‘Cults:’ A Policing Model,” *FBI Law Enforcement Bulletin* 69, no. 9 (2000, September): 16–24.

offend the sensibilities of the surrounding public have they been viewed as objects for critical examination and study.

Collectively, this body of scholarly and critical literature provides the historical and legal aperture through which an examination of governmental frameworks that emerge when dealing with opaque communities can be viewed. However, much of the research on opaque communities deals with discreet events that happened to involve such groups rather than on communities themselves as a perennial homeland security challenge. Within this scholarship, the group's theology, ideology, psychosocial characteristics, or political aspirations, rather than the practical implications of their withdrawal from society and its impact on governmental ability to protect the homeland, has been the core focus. Many of the works do identify the development of methods of obtaining relevant intelligence and/or models of effective communication and contact with closed communities as a recommendation or identified area of further inquiry, which suggests this to be a topic in need of additional scholarly attention. As such, it would appear that the targeted line of inquiry—namely, whether governmental entities are prone to oppositional frameworks when dealing with such communities within their jurisdictions—remains a gap in the current body of literature and one that would contribute to a greater understanding of this unique governmental challenge.

IV. BRANCH DAVIDIANS

“Look, this is life, this is life and death...theology really is life and death.”

–Vernon Wayne Howell aka David Koresh, speaking during
911 call to Waco Sheriff’s Department officer as BATF
assault was underway, February 28, 1993

A. BACKGROUND AND CONTEXT

In the early 1990s, an obscure Seventh-Day Adventist offshoot known as the Branch Davidians and its spiritual leader Vernon Wayne Howell (aka David Koresh) became entangled in an intractable standoff with federal authorities. This widely misunderstood opaque community of approximately 130 men, women, and children was alternatively characterized as a violent apocalyptic cult or a group of brainwashed adherents under the complete control of a pedophile megalomaniac posing as a messianic prophet. Tragically, governmental consideration of the possible sincerity of the group’s fervent though obscure beliefs and professed ultimate concerns was routinely dismissed in favor of explanations suggesting the Davidians’ religion was simply window dressing for deviant acts and criminal conspiracy. Local, state, and federal law enforcement and homeland security officials, disturbed by reports of Koresh’s dominion over community members and message of a forthcoming apocalypse, sought various intervention inroads into the community that culminated in a federal investigation targeting suspected illicit weapons manufacturing. This investigation climaxed with an ill-conceived and poorly executed law enforcement raid that resulted in the deaths of four federal agents and six of Koresh’s adherents, an intractable 51-day siege, and the incineration of 75 Davidians, including 25 children, in an inferno on April 19, 1993.⁵⁷

Though both Koresh and other individual members of the Branch Davidians were involved in various forms of highly suspicious and very likely criminal behavior, this activity neither clearly permeated the entire Davidian community nor was it immune to traditional investigative techniques. Rather, the fact that the Davidians were a highly

⁵⁷ U.S. Department of Justice, *Report to the Deputy Attorney General*, 312.

devout opaque community that shared a worldview deemed incomprehensible by most outsiders seemed to influence homeland security stakeholders' assessment of and interaction with the group. As James Tabor, a religious scholar who was present at the Waco siege, notes in his book *Why Waco?*,

To the FBI, [Koresh] was a con man using religion to cover his need for dominance and pleasure. To the psychiatrists he was psychopathic, suffering from delusional paranoia. Such perceptions, whether valid or not, obscured the only positive means of dealing with Koresh and his followers.⁵⁸

In turn, this seems to have limited numerous officials' capacity to accept alternative explanations for the group's actions and blinded them to available enforcement opportunities while simultaneously preventing officials from accurately assessing threats emanating from the group. These assessments appear to have been further misinformed by official suspicions of systemic child abuse, forced confinement of intending absconders, and a prevalence of lewd and criminal activity by the group.

After providing a historical background and contextual perspective to the investigations leading up to the tragic 1993 raid, this chapter will analyze a number of the motivations and assumptions that prompted local, state, and federal officials to pursue violent intervention into this opaque community as the only perceived tactical option available to deal with Koresh. In particular, federal law enforcement's tendency to overestimate the threat emanating from the Branch Davidians due to its opacity, to discount the possibility of productive communication using biblical context, and to unnecessarily endanger minors and other innocent community members without discernable cause will be explored. Through this examination, the guiding framework of collective assumptions and logical biases adopted by Texas' homeland security establishment and directly influenced by the closed nature of the Branch Davidians will emerge.

⁵⁸ Tabor and Gallagher, *Why Waco?*, 21.

1. Seventh-Day Adventist Roots

Though hastily labeled a messianic cult whose followers were under the complete control of their mentally unstable prophet David Koresh, the Branch Davidians are in fact a theological offshoot of mainline Seventh Day Adventism (SDA). Like their parent religion, the Davidians believed 1) the apocalyptic end of the world was imminent, 2) prophecies and statements contained in the King James Version of the Bible were applicable to current events and could be deciphered to predict the apocalypse, 3) living prophets were needed to interpret God's Word, and 4) the Sabbath was to be observed on Saturday.⁵⁹ The Davidian SDA "branch" traced its roots to Bulgarian immigrant Victor Houteff, a Los Angeles salesman who joined SDA in 1918 and developed an intense interest in biblical prophecy 10 years later.⁶⁰

Disenchanted with what he saw as the development of SDA into an apostate theology, Houteff gradually dissented with mainline SDA doctrine and founded Mount Carmel in 1935 as a religious community devoted to maintenance of true Adventist beliefs in the imminent end of the world and execution of God's judgment.⁶¹ Whereas mainline SDA interpreted scripture to foretell God's Kingdom as a spiritual existence following the apocalypse, Houteff maintained it, "was to be a literal, physical, millennial rule on earth" which was drawing near and about which he, as the seventh and final in a line of prophesized reformers, had a privileged understanding.⁶² Houteff's ideology focused on biblical references contained in Revelation 7 that referred to 144,000 "servants of God," who would survive the apocalypse as God's chosen people.⁶³ He taught that mainline SDA had become complacent, proposed himself as the rejuvenating spiritual leader and prophesized "angel from the east" who would assemble and protect the remnant of these 144,000.⁶⁴ With haunting prescience to the Waco tragedy, Houteff

⁵⁹ Wessinger, *How the Millennium Comes Violently*, 86.

⁶⁰ Tabor and Gallagher, *Why Waco?*, 34.

⁶¹ Wessinger, *How the Millennium Comes Violently*, 86.

⁶² Tabor and Gallagher, *Why Waco?*, 35.

⁶³ Ibid.

⁶⁴ Ibid., 34.

also alleged that prior to the literal and this-worldly re-establishment of this Kingdom of David in modern-day Israel and ruled over by an “antitypical King David,” the faithful would be cleansed by a baptismal, purifying fire.⁶⁵

The Davidian tradition of social seclusion and self-assessed privileged status as a pre-apocalyptic gathering of God’s chosen was well established prior to Koresh’s arrival. Houteff’s SDA faction, which took the name Davidian Seventh-day Adventists, initially withdrew to a remote property seven miles northwest of Waco, Texas, which they named Mount Carmel, and later relocated to a second property northeast of town that retained the name. It was here the group developed a tradition of opacity through conscious and purposeful separation from the “worldly” influences of their surrounding community. The Davidians maintained SDA traditions of being distrustful of both governmental authority and secularism while promoting a Bible-centric lifestyle.⁶⁶ The group celebrated neither Christmas nor Easter, maintaining its own school system and even operating a denominational college until financial difficulties forced its closure. Though residents accepted outside employment, they attempted to isolate themselves from external influence to the maximum extent possible. Through their unique religious practices, devotion to Bible study, and special diet, members maintained a regimented lifestyle that underscored their distinctive nature and solidified members’ social and emotional bonds to the community.⁶⁷

Following Houteff’s death in 1955, his wife Florence briefly became the group’s prophet and moved the group to its new location near Waco in 1957. After Florence’s false prediction that Armageddon would occur on April 22, 1959, community membership dwindled, Florence moved away, and Ben Roden assumed the role of Davidian prophet until his death in 1978. His wife Lois and their son George struggled for succession, with Lois eventually establishing herself as the feminine Holy Spirit or Shekinah, a concept of androgynous unity that would later influence Koresh’s

⁶⁵ Kenneth G. C. Newport, “‘A Baptism by Fire’: The Branch Davidians and Apocalyptic Self-Destruction,” *Nova Religio: The Journal of Alternative and Emergent Religions*, 13, no. 2 (2009): 80, doi:10.1525/nr.2009.13.2.61. 61–94

⁶⁶ Docherty, *Learning Lessons from Waco*, 94.

⁶⁷ *Ibid.*, 94–95.

teachings.⁶⁸ Koresh would subsequently identify himself as the true seventh in a succession line of angels described in the Book of Revelations and as the messiah who would battle Babylon, thereby launching Armageddon and the establishment of God's Kingdom on earth.

After a tumultuous childhood and some initial setbacks as a young adult, Vernon Wayne Howell arrived at Mount Carmel in 1981 at the age of 22. Lois Roden (aged 67) established a romantic relationship with Vernon and began to groom him as her successor in lieu of her son George. Vernon subsequently married 14-year-old Rachel Jones in 1984. Together, they traveled to Israel in January 1985, where Vernon received a revelation that he was associated with Cyrus, biblical king of the Persians, and with the metaphorical Lamb referenced in the Book of Revelations. Upon their return, Lois and Vernon experienced a falling-out, leading George to oust Vernon and his newly gained followers from Mount Carmel in June 1985.⁶⁹ Lois died in November 1986, leaving her son to vie with Vernon over succession.

2. Polygamist Activity at Mount Carmel

It during this period that Vernon's illicit activities and pursuit of numerous polygamist relationships began. In the spring of 1986, Vernon married the 14-year-old daughter of a church member and, later that year, Rachel's 12-year-old sister. Note that with regards to the first marriage, under Texas law existing at the time, 14 was the legal age for marriage with parental consent. In 1987, Vernon married three additional women aged 16, 17 and 20, all of whom with he later fathered children, bringing his total number of wives to six.⁷⁰ According to the FBI, by February 1993, the number had grown to 10, with an unknown number of planned additional unions.⁷¹ Though his legal wife Rachel initially protested, she acquiesced when it was later revealed to her in a dream that this

⁶⁸ Wessinger, *How the Millennium Comes Violently*, 88.

⁶⁹ Ibid., 82.

⁷⁰ Tabor and Gallagher, *Why Waco?*, 43.

⁷¹ U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco*, 16.

was God's will.⁷² The remaining Davidians' viewed these unions as "sacred" marriages, which were biblically permissible due to Vernon's status as the "Lamb," as explained by a former member. According to the Davidians' interpretation of Revelations, it was, "considered an honor to have a baby for Christ," and girls' parents believed that their daughters would bear children for the Lord.⁷³ In order to shield Koresh from potential statutory rape charges stemming from these extramarital relationships and provide legal legitimacy for the subsequent pregnancies, the girls were legally married to other Davidian men.⁷⁴ In 1989, Vernon would subsequently reveal his biblically supported "New Light" teaching that all Davidian women, regardless of their marital status, should become his wives, with all other men maintaining celibacy.⁷⁵ Koresh's spiritual justification for this polygamy was that children of his seed would eventually establish a "House of David" and rule the post-apocalyptic world.⁷⁶ After 1989, men and women lived in separate quarters at the Mount Carmel compound, practicing a strict form of communal life according to Koresh's instructions.⁷⁷

As with other polygamist groups, there are two obstacles to law enforcement interventions into such voluntary cohabitation arrangements. First, in the absence of documentation substantiating a plural marriage, any polygamy investigation must prove that an extra-marital sexual relationship or cohabitation arrangement actually constitutes an illegal union. In Koresh's case, he had only one legal wife—Rachel Jones—with the remainder of his wives bonded through "sacred" relationship only rather than through a state licensed and duly registered marriage. The fact that at least some of Koresh's additional wives were legally married to other male Davidians, all of whom cohabitated in the Mount Carmel shared domicile, further complicated any potential investigative inroads into polygamous unions. Second, with regard to both involuntary polygamous relationships and instances of statutory rape, investigators would require a criminal

⁷² Wessinger, *How the Millennium Comes Violently*, 82–83.

⁷³ *Ibid.*, 83.

⁷⁴ Tabor and Gallagher, *Why Waco?*, 67.

⁷⁵ Wessinger, *How the Millennium Comes Violently*, 84.

⁷⁶ Bromley, "Dramatic Denouements," 31.

⁷⁷ Tabor and Gallagher, *Why Waco?*, 32.

complaint from either the victim or another family member or witness. Because “sacred” polygamous marriages to Koresh were at least tacitly sanctioned and supported by the Davidian community and freely entered into by the women involved, investigators were restricted to hearsay investigations from impacted former members and apostates. Without cooperating victims or witnesses, authorities had little means to combat polygamous activity at Mount Carmel. Obviously, though no explanation excuses such clearly illicit, licentious behavior, whether Koresh simply concocted biblical justification to satisfy his sexual cravings, employed it as a form of social control over his followers, or sincerely believed he was preordained to father a collection of future post-apocalyptic religious leaders will likely never be known.

3. Official Concerns Emerge

Despite these problematic legal hurdles, family members of Davidians, apostates, state agencies, and eventually federal officials were collectively disturbed by reports of statutory rape, polygamy, forced marriages, and abuse. Through the aforementioned lack of investigative initiation points, however, attempts at official intervention were fruitless. This inability to substantiate illicit activity that stakeholders were convinced was taking place intensified official frustrations, further amplifying the perceived threat and menace emanating from Mount Carmel.⁷⁸ This simmering collective sense of concern and disgust, aggravated by exasperation towards apparent governmental impotence, likely strengthened a public/private coalition of opposition. What resulted was increased pressure to initiate some form of action to disrupt the status quo at Mount Carmel, particularly given the lack of situational awareness regarding the compound and parallel magnification of perceived threat. This understandably led stakeholders to seek any available inroad to disruption of Koresh’s activities or at least an enhanced ability to determine the group’s nature, activities, and intentions.

In November 1987, Koresh and his followers had their first major legal altercation. George Roden, still contesting Koresh’ status as the next prophet of the Mount Carmel compound, exhumed the body of a long deceased Mount Carmel resident,

⁷⁸ Bromley, “Dramatic Denouements,”31.

challenging Vernon to a contest to see which of them could raise the dead. Following an attempt to file a criminal complaint regarding the unauthorized exhumation with the McLennan County Sheriff's Office during which they were directed to provide substantiation, Vernon, accompanied by three Davidians, returned to Mount Carmel to collect the needed photographic evidence, likely viewing their efforts as a quasi-official and legally condoned public service. A gunfight ensued, and the sheriff's duties called to respond to the altercation discovered Koresh and six followers, dressed in combat fatigues and armed with shotguns, .22-caliber rifles, and over 3,000 rounds of unspent ammunition, firing at Roden who was injured and taking cover behind a tree.⁷⁹ Koresh and his cohorts were arrested and charged with attempted murder. Following a 10-day trial in April 1988, the jury acquitted his associates but failed to reach a verdict on Vernon, which led to the release of all four defendants. When Roden experienced additional legal troubles, Vernon and his adherents settled the \$62,000 owed in back taxes and assumed possession of the Mount Carmel property. Roden was eventually placed in a psychiatric hospital after murdering a man in 1989.⁸⁰

4. The Rise of David Koresh

In August 1990, Vernon legally changed his name to David Koresh. This action identified Koresh with the "Cyrus message" he had received from God in Israel in 1985. Koresh, Hebrew for "Cyrus," was symbolically significant as the biblical Persian king Cyrus had conquered Babylon in 539 B.C., thereby permitting the Jews to return to their promised land. Cyrus was identified in Isaiah 45:1 as a "messiah," or one designated to perform a special mission on behalf of God. Koresh further found biblical justification of his messianic status in Psalms 45, alleging that this scripture prophesized his polygamy and foretold of the eventual elevation of any children he fathered to rulers of the earth.⁸¹ Koresh identified himself as "a" rather than "the" messiah, revealing to his adherents the

⁷⁹ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell Also Known as David Koresh* (Washington, DC: Government Printing Office, 1993), 19.

⁸⁰ Wessinger, *How the Millennium Comes Violently*, 83.

⁸¹ *Ibid.*, 84.

true path to salvation through his interpretation of the Seven Seals identified in the Book of Revelations.⁸² Through his status as the earthly incarnation of “the Lamb,” Koresh’s divinely inspired interpretation of the Bible led him to predict he would lead the Davidians to Palestine/Israel to assist the Israelis in an apocalyptic battle against a United Nations force led by the United States. Koresh maintained he himself would be killed, but the Lamb later resurrected to pass judgment and establish God’s Kingdom on earth.⁸³ This apocalyptic prediction would later be amplified through Koresh’s announcement that it would begin with an attack against the Branch Davidians in the United States rather than overseas.⁸⁴

Koresh and the Branch Davidian theology drew membership from a diverse cadre of followers who shared an intense interest in spiritual devotion and study. Federal agents would incorrectly estimate that 75 devout followers lived on the 77-acre Mount Carmel property, many of them women and children.⁸⁵ In actuality, on February 28, 1993, 125 of Branch Davidians total membership of about 130 was present at Mount Carmel when the raid commenced.⁸⁶ Membership consisted of 42 men, 46 women, and 43 children.⁸⁷ About half of the Branch Davidians were foreign nationals, one third of whom were British, recruited from over a dozen countries.⁸⁸ The group was also multi-ethnic, and over half of the members were minorities, including 45 blacks and 25 Asians or Hispanics.⁸⁹ Far from being a homogenous congregation of naïve, impressionable fanatics, Koresh’s adherents were bound by common dedication to a fervent pursuit of religious devotion, intense Bible study, and preparation for a coming apocalypse in their own time. This ethnic diversity, multi-nationality, and comparatively ardent dedication to

⁸² Bromley, “Dramatic Denouements,”30.

⁸³ Wessinger, *How the Millennium Comes Violently*, 85.

⁸⁴ Bromley, “Dramatic Denouements,”31.

⁸⁵ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 38.

⁸⁶ Ibid., 146.

⁸⁷ Wessinger, *How the Millennium Comes Violently*, 90.

⁸⁸ Tabor and Gallagher, *Why Waco?*, 24.

⁸⁹ Wessinger, *How the Millennium Comes Violently*, 90.

their beliefs likely further constrained the surrounding secular community's understanding of the Davidian's nature. Possibly owing to their self-imposed rural seclusion from outsiders, however, most of Waco's citizens viewed this odd collection of religious "fanatics" with "indifferent bemusement" rather than xenophobic fear prior to the federal siege.⁹⁰

5. The Anti-Koresh Coalition

Though the Davidians did not view themselves as a persecuted minority, the group had sustained repeated and intensifying intrusion by outside actors prior to drawing federal law enforcement scrutiny. Apostates and supporting anti-cult activists attempted to focus governmental concern and investigative interest in the community by highlighting and exaggerating "atrocities tales."⁹¹ Davidian apostate Marc Breault was instrumental in both drawing critical attention to the Mount Carmel community and in defaming Koresh to be a false prophet. Breault and his wife left the Davidians in September 1989 and eventually moved to Australia following Koresh's assertions that even the married female members of the community were in fact his wives. In addition, Breault viewed Koresh's sexual relations with underage girls as morally repugnant.⁹² Though his differences with Koresh are legitimate and understandable, the sustained efforts Breault undertook to generate a campaign against his former community and Koresh are indicative of both the ardor with which disaffected ex-converts can malign their former congregation and the success that a personal crusade by a disaffected apostate can have against a "cult" from which they "escaped."

Breault's efforts against the Davidians included assistance to opposing parties in child custody matters. Breault aligned with fellow apostate Robyn Bunds in an attempt to convince law enforcement officials in California and Texas that Koresh was planning child sacrifice—an assertion made in support of Bunds's 1990 custody battle over her

⁹⁰ Reavis, *The Ashes of Waco*, 279.

⁹¹ Stuart A. Wright, *Armageddon in Waco: Critical Perspectives on the Branch Davidian Conflict* (Chicago: University of Chicago Press, 1995), 83.

⁹² Wessinger, *How the Millennium Comes Violently*, 96.

and Koresh's child Shaun.⁹³ Breault's efforts also included providing affidavits from Australian defectors via a hired detective to authorities in La Verne, California and Waco, as well as federal immigration and revenue agents. In 1991, Breault warned David Jewell that his daughter Kiri, who lived at Mount Carmel with her mother Sherri Jewell, was in danger of being taken as another of Koresh's wives. Breault testified at Jewell's custody hearing, alleging that in addition to sexual misconduct by Koresh, life at Mount Carmel deprived members of human rights and included deprivation of food and water, unsanitary living conditions, child abuse, and mandatory physical fitness sessions. Based largely on Breault's affidavit and characterization of the Davidians as a "destructive cult," the court granted full custody to Kiri's father David.⁹⁴

That same month, Breault and Jewell contacted the Texas Department of Human Services, alleging that the Davidians were abusing children. Koresh cooperated with investigator Joyce Sparks of the Texas Child Protective Services (CPS), allowing three social worker visits to Mount Carmel and permitting them to conduct private interviews with Davidian children. Sparks would later report to the U.S. Bureau of Alcohol, Tobacco, and Firearms (BATF) that she was escorted through the building on arranged tours during these visits and suggested that, based on his apocalyptic references, Koresh may have violent tendencies.⁹⁵ Koresh also voluntarily visited Sparks's office to answer questions. Sparks, the lead investigator for the case, eventually closed the case on April 30, 1992 citing lack of evidence of abuse.⁹⁶ The office would open a second investigation in February 1993 based on 12-year-old Kiri Jewell's allegations that her mother left her in a motel room with Koresh when she was 10. However, because Kiri refused to press charges, the state did not attempt to indict Koresh based on this complaint.⁹⁷ Breault's and other's charges that Koresh was abusive and violently disciplined Davidian children apparently stemmed from isolated allegations from 1986 to 1990. Though it is unclear if

⁹³ Ibid.

⁹⁴ Tabor and Gallagher, *Why Waco?*, 86.

⁹⁵ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 30.

⁹⁶ Wessinger, *How the Millennium Comes Violently*, 62.

⁹⁷ Ibid., 63.

Koresh was overly controlling, community children interviewed by social workers denied any allegations of misconduct. The use among the community of a wooden spoon to spank misbehaving children was deemed a common disciplinary practice and thus not indicative of abuse.⁹⁸ Despite its inability to substantiate any of the abuse allegations, “the failure of these investigations created frustration, particularly within the CPS, over an inability to confirm illicit activity officials were convinced was taking place.”⁹⁹

Undeterred, in March 1992, Breault and his newfound compatriot David Jewell began to allege that the Davidians were contemplating a mass suicide on or around April 18, 1992, suggesting Mount Carmel could become “another Jonestown.” This allegation was passed through Michigan and Texas politicians to the FBI, who likewise found no evidence of these allegations and closed its case. Despite the lack of evidence for either allegation, these reports of mass suicide and child abuse were “instrumental in gaining Department of Justice approval for the initial raid in February 1993 and for employing the ‘dynamic entry’ tactic as opposed to other alternatives.”¹⁰⁰ Despite never coming to fruition—a detail never explained by the growing coalition of anti-cult activists—this allegation also prompted the *Waco Tribune-Herald* to investigate the Branch Davidians.¹⁰¹ Tangential to Breault’s anti-Koresh campaign, in 1992, professional “cult buster” and “deprogrammer” Rick Ross was contacted by siblings of an unnamed Branch Davidian to assist in dissuading their brother from relocating to Mount Carmel. Ross’s intervention was successful, seemingly validating his professional credentials and influencing both officials’ and the media’s subsequent characterizations of Koresh as the leader of a dangerous cult.¹⁰²

Through such advocacy, Breault and other apostates orchestrated what ultimately became a negative publicity campaign against the Davidians, generating both law enforcement interest in the alleged activities at Mount Carmel and indelibly shifting the

⁹⁸ Ibid.

⁹⁹ Bromley, “Dramatic Denouements,” 31.

¹⁰⁰ Ibid., 32.

¹⁰¹ Wessinger, *How the Millennium Comes Violently*, 97.

¹⁰² Tabor and Gallagher, *Why Waco?*, 95–96.

public image of the Davidians through negative media portrayals. In Docherty's analysis, such opponents disseminate symbolic narratives through the aforementioned "atrocious tales" alleging acts which, when combined with circumstantial evidence by investigators, suggested a potential elevated threat. Docherty notes, "[by] weaving (material) evidence of firearms purchases together with (social) allegations of sexual improprieties and domestic violence, the BATF produced a (symbolic) narrative about a deviant and potentially a dangerous group led by a manipulative, authoritarian, and violent individual."¹⁰³ Because of the opaque nature of the Davidians and presumed reluctance by Koresh and others to resolve potential violations in an open dialogue, there was no viable method of corroborating the alleged atrocities beyond a forceful intervention by legally empowered governmental actors—in this case, the BATF. "Unsuccessful" interventions, such as Texas Child Protective Service's child abuse inquiry and the FBI's assessment of mass suicide claims, were either discounted as disconfirming evidence to the contrary or, more likely, viewed as actions thwarted by the Davidians' conspiratorial guile. Likewise, because the closed Davidian community neither undertook its own countervailing publicity campaign nor openly addressed these allegations levied against the group and its leader, the opposing coalition's narrative constituted a one-sided monologue that was readily accepted as objective fact in order to fill the information void regarding the group's practices and intentions.

B. FEDERAL INVESTIGATION

The BATF investigation into Koresh's firearms activities began in May 1992 following a report from the McLennan County Sheriff's Department (MCSD). The investigation was predicated on the discovery of and report by a United Parcel Service driver that a package delivered to Mount Carmel had broken open, revealing it contained empty hand grenade casings.¹⁰⁴ According to reports, multiple shipments of firearms valued at over \$10,000, inert grenade casings, and a large volume of black powder had been delivered to a Davidian business known as the "Mag Bag." The Mag Bag was in

¹⁰³ Docherty, *Learning Lessons from Waco*, 38.

¹⁰⁴ Reavis, *The Ashes of Waco*, 33.

fact a metal building located a few miles from the compound property used by Mount Carmel residents to repair vehicles and operate a gun dealership. Based on indications that Davidians had also buried a school bus to use as both a firing range and bunker, were constructing a “barracks-type cinder-block structure,” and had assembled a stockpile of weapons, MCSD requested BATF to investigate.¹⁰⁵

BATF Special Agent (SA) Aguilera’s initial investigation revealed that the UPS driver had delivered, “a large quantity of powdered aluminum metal, a common ingredient in explosives, and 60 ammunition magazines for AR-15 rifles.”¹⁰⁶ Koresh was also alleged to have received assault weapons and machinegun conversion kits, even though neither Koresh nor his followers were licensed as federal firearms dealers or listed as having registered any National Firearms Act weapons such as machineguns.¹⁰⁷ Although the parts kits themselves were legal, their only normal use is as replacement parts for previously registered, pre-1986 machineguns. However, no Mount Carmel residents were determined to possess any such previously registered weapons. SA Aguilera further established that a local gun dealer named Henry McMahon had sold firearms and upwards of 65 AR-15 lower receivers to Koresh some months earlier. BATF agents knew that by using lathes and milling machines, a skilled machinist could alter AR-15 lower receivers and combine these with M-16 parts kits to assemble machineguns. Furthermore, agents knew that there was no practical reason for exchanging most AR-15 parts with M-16 parts other than for this purpose, as such an exchange might actually degrade the performance of a legal semiautomatic weapon.¹⁰⁸ Collectively, these circumstances led SA Aguilera to infer that Koresh and his followers were illegally manufacturing machineguns from replacement part kits and producing destructive devices, including grenades.¹⁰⁹ However, nowhere in his subsequent affidavit did Aguilera indicate that Koresh or other Davidians were illegally fabricating restricted

¹⁰⁵ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 17.

¹⁰⁶ *Ibid.*, 21.

¹⁰⁷ *Ibid.*, 22–23.

¹⁰⁸ *Ibid.*, 24–26.

¹⁰⁹ *Ibid.*, 24.

automatic sears or physically altering semiautomatic lower receivers in violation of federal law.¹¹⁰

1. Diverging Views of Federal Firearms Laws

Koresh's and the Davidians' interest in and trafficking of semiautomatic assault weapons and machinegun parts kits was understandably disconcerting to local and federal authorities. However, Koresh's exact purpose and intent for possessing these items is key to the subsequent justification and evolution of the investigation into the Branch Davidians, and an area in which the opaque nature of the group played a critical part in law enforcement's posture towards the community. Aguilera's case was based on suspicions that Koresh was illegally manufacturing machineguns from component parts and assembling and possessing destructive devices including grenades, explosive bombs, and their component materials without a license.¹¹¹ These suspicions rested on the assumption that the Davidians were both taking technical steps to mill AR-15 lower receivers and assemble destructive devices from parts and materials known to be in their possession. Though the BATF would develop circumstantial evidence that such steps had been taken, its generally aggressive enforcement posture was likely heavily influenced by the fact that it did not and, due to the group's closed nature, could not know if such organizational intent to develop these weapons did indeed exist.

Conversely, Koresh and the Davidians involved in the group's weapons side business had legitimate cause to believe they were being unduly persecuted by federal authorities for their involvement in an entirely legal secular firearms trade unrelated to their religious convictions. Koresh was reportedly both extremely knowledgeable about yet critical of federal firearm laws. Koresh and fellow Davidians Paul Fatta and Mike Schroeder openly operated a gun business from the compound. Fatta and Schroeder in particular frequented gun shows throughout Texas, buying and selling large quantities of weapons that generated thousands per year in short-term profits used to support the

¹¹⁰ U.S. House of Representatives Committee on Government Reform.

¹¹¹ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 24–25.

Mount Carmel commune.¹¹² Koresh also invested in semiautomatic assault rifles hedging that if the government restricted such weapons, the Davidians could make a profit on their resale.¹¹³ Despite this business venture's overlap with both the Mount Carmel property and Koresh's responsibilities as the community's leader, the remaining Davidians maintain that this strong interest in weapons was restricted to these individuals rather than shared by the community as a whole. Multiple members, including Koresh's "right-hand man" Steve Schneider, detested guns.¹¹⁴ Likewise, although the Davidians believed strongly in self-defense—particularly in opposition to intrusion by "Babylonian" hegemony—they were instructed to never initiate violence until the final confrontation began, at which time the use of violence solely for self-defense against evil was permitted.¹¹⁵

2. A Failure to Communicate

The BATF's agenda in developing a criminal case and accompanying preference for operational secrecy, despite Koresh's professed willingness to openly address any regulatory interest in the gun business in spite of his disdain for governmental intrusion, created a communication logger jam between these parties. On 30 July 1992, SA Aguilera interviewed gun dealer Henry McMahon regarding his legal business partnership with Koresh. During BATF's compliance visit, McMahon telephoned Koresh to advise him of BATF's interest in the merchandise Koresh had purchased. Koresh stated, "If there's a problem, tell them to come out here. If they want to see my guns, they're more than welcome."¹¹⁶ SA Aguilera was offered the phone to speak with Koresh directly but declined.¹¹⁷ As would later become evident, Koresh believed he had clearly communicated his willingness to address any BATF concerns, leading him to feel betrayed by the government's decision to decline open dialogue in favor of an armed

¹¹² Tabor and Gallagher, *Why Waco?*, 64.

¹¹³ Wessinger, *How the Millennium Comes Violently*, 60, 62.

¹¹⁴ Tabor and Gallagher, *Why Waco?*, 64.

¹¹⁵ *Ibid.*, 66.

¹¹⁶ Wessinger, *How the Millennium Comes Violently*, 60.

¹¹⁷ *Ibid.*

raid.¹¹⁸ Months later on February 28, while being interviewed by local KRLD radio, Koresh would in fact highlight the cordial relationship he had customarily enjoyed with McLennan County Sheriff Jack Harwell.¹¹⁹ This comment further indicates the betrayal Koresh likely perceived given his own efforts to operate in a legal and forthright manner vis-à-vis law enforcement. As Vic Feazell, the former district attorney assisting with the BATF investigation, later stated, “[I]f they’d [the BATF] called and talked to them, the Davidians would have given them what they wanted.”¹²⁰ It would appear that the closed nature of the Davidians contributed to this official disinclination to embrace open dialogue, which led BATF investigators to dismiss such blatant conciliatory offers by the group.

Rather than accept Koresh’s offer to inspect his weapons openly, BATF agents instituted a series of undercover fact finding operations beginning in January 1993. On January 11, agents masquerading as college students established an undercover residence directly across from the Mount Carmel property. After visiting their new neighbors, the Davidians apparently immediately recognized the men were undercover officers.¹²¹ On 27 January 1993, Koresh contacted McLennan County Sheriff’s Office (MCSO) to complain that a deliveryman that Koresh had instantly spotted as an undercover agent was spying on the compound.¹²² BATF Special Agent Robert Rodriguez, posing as Robert Gonzalez, made numerous visits to Mount Carmel to participate in Koresh’s Bible study sessions and was eventually invited to practice shooting with Koresh.¹²³ During the course of the investigation, Rodriguez would himself see no illegal weapons present at the compound.¹²⁴ Koresh would later reveal that he also had established Rodriguez/Gonzalez to be a BATF undercover agent, further indicating the degree to

¹¹⁸ Docherty, *Learning Lessons from Waco*, 42.

¹¹⁹ Tabor and Gallagher, *Why Waco?*, 11.

¹²⁰ Wessinger, *How the Millennium Comes Violently*, 98.

¹²¹ *Ibid.*, 60.

¹²² *Ibid.*

¹²³ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 33.

¹²⁴ Reavis, *The Ashes of Waco*, 73.

which the Davidians, over a period of months, were aware of law enforcement interest in their activities but were simultaneously unable to establish a dialogue with investigators.

3. Machineguns or Semiautomatics?

Koresh, Fatta, and Schroeder, through their firearms business, had apparently developed extensive knowledge of the relevant federal firearms regulations. Though they had acquired an large inventory of assault rifles and the parts necessary to convert them to automatic weapons, they were likely well aware of the exact point at which any actions to convert legally authorized semiautomatic carbines into machineguns would be impermissible without fulfilling registration and taxation requirements. Though the group apparently disagreed with some aspects of federal firearms regulations and held disdain for the BATF, such a sentiment is not in and of itself an indication of criminal intent. Koresh and some of his adherents were gun enthusiasts and operated a weapon and tactical gear business to provide financial support to the community. Although the group did collectively possess a large number of weapons, by Texas standards, their rate of gun ownership was not remarkable. Of gun owners in Texas at the time, 18 percent owned five or more weapons, and the possession of a large number of weapons is not a prosecutable crime.¹²⁵ In addition, Koresh strongly believed in and preached that the Davidians would have to defend themselves against the forces of Babylon in the coming Armageddon, providing an ideological motive for weapons caching and self-imposed firearm familiarization and training. Collectively, Koresh and the group were both highly motivated to assemble an arsenal, were intimately aware of the legalities involved, and were inherently suspicious of governmental interest in or efforts to restrict their 2nd Amendment right to bear legal arms as they saw fit, regardless of governmental appreciation for their reasoning.

Of greatest import to BATF's investigative authorities and jurisdictional basis for intervention was an array of circumstantial evidence that suggested Koresh and his followers had in fact taken steps to assemble automatic weapons and destructive devices,

¹²⁵ David B. Kopel and Paul H. Blackman, *No More Wacos: What's Wrong with Federal Law Enforcement and How to Fix It* (New York: Prometheus Books, 1997), 52.

though such reports were primarily hearsay and conjecture. SA Aguilera interviewed a Mount Carmel neighbor with military experience who reported hearing nighttime gunshots coming from the compound that he identified as being automatic and .50-caliber weapons fire. During one of Rodriguez's visits, Koresh mistakenly suggested that possession of a "drop-in sear" for use in converting a semi-automatic into a machinegun was legal so long as the possessor did not also have the weapon to be converted, though he did not claim to own any such sear.¹²⁶ In mid-November, a deputy sheriff reported having heard a loud explosion and seeing a cloud of gray smoke near the compound.¹²⁷ Yet another recently departed apostate reported that community members had machined weapons using a lathe and milling equipment and possessed computer designs for a sub-machinegun. This former member also reported seeing .50- and .52-caliber weapons, approximately 40 assault rifles, multiple pistols, and tactical shotguns at the compound.¹²⁸ As would later be revealed in a 1996 congressional investigation into the federal law enforcement activities directed against the Branch Davidians, the reported explosion had been previously clarified as having been attributed to the group's use of dynamite for construction, and the illegal .52-caliber weapon was determined to be a fully legal .50-caliber Barret firearm.¹²⁹

Former Branch Davidian Marc Breault reported extensively on Koresh's interest in assembling machineguns, disdain for gun control laws, and tendency to boast about how easily one could assemble automatic weapons from easily acquired and fully legal component parts.¹³⁰ Background checks on Mount Carmel residents also revealed that some of the 40 foreign residents were presently without legal immigration status and others had been convicted or arrested for crimes that could prohibit them from possessing

¹²⁶ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 35.

¹²⁷ *Ibid.*, 26–27.

¹²⁸ *Ibid.*, 32–33.

¹²⁹ *U.S. House of Representatives Committee on Government Reform*, 12–13.

¹³⁰ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 29–30.

firearms per 18 U.S.C. 922(g).¹³¹ BATF technical experts suggested the explosive materials Koresh possessed could be used to construct destructive devices, but they were unable to definitively conclude that Koresh had sufficient materials to do so.¹³² In addition, research revealed some of the Davidians' business partners had recently committed violations related to automatic weapons, in two cases involving the same parts kits obtained by Koresh.¹³³

BATF had obtained hearsay evidence from apostate David Block that aside from Koresh, two additional Davidians were directly involved in converting semiautomatic AR-15 rifles into machineguns: mechanical engineer Donald Bunds and Jeff Little, both of whom Block alleged to have seen operating a metal lathe and milling machine to manufacture weapons.¹³⁴ Aside from these potential co-conspirators and additional reports that Koresh was guarded by a phalanx of what were termed his "Mighty Men," there was no evidence suggesting the remainder of the Davidians were involved in illicit weapon modification or production. In fact, the only indication that the bulk of the Davidians were even aware that Koresh possessed illegal weapons was based on reports that apostates had seen what appeared to be automatic assault rifles and Koresh's presentation during one of his sermons of what he claimed was machinegun version of an AK-47 rifle.¹³⁵

C. THE NEGATIVE IMPACT OF GROUP OPACITY

Given the totality of these circumstances, BATF's persistence in developing probable cause in support of a warrant search of the Davidians' compound is reasonable. While conducting their crime scene search following the Mount Carmel fire, Texas Rangers would subsequently discover 305 firearms among the debris, including 20 fully automatic AK-47 rifles, at least 12 fully-automatic AR-15 rifles, and armor-piercing

¹³¹ Ibid., 31.

¹³² Ibid.

¹³³ Ibid., 32.

¹³⁴ Ibid.

¹³⁵ Ibid., 123.

ammunition, which substantiated the legitimacy of BATF's initial concerns.¹³⁶ However, according to federal law, some note that even these weapons were not outright illegal, but rather their possession necessitated fees and lawful registration in the National Firearms Registration and Transfer Record.¹³⁷ It is therefore less a question of the legitimacy of BATF's suspicion of regulatory infractions, but rather the relative necessity of the agency's investigative techniques, organizational zealotry, and unwillingness to enter open dialogue with Koresh that indicates prejudicial treatment of the community due to its closed nature. Despite the fact that BATF's suspicions regarding Koresh's and other's conversion of semi- to fully-automatic assault rifles proved to be true, one must question whether a violent tactical assault on this entire opaque community was indeed a necessary and measured use of governmental force in this case. It rather appears likely that BATF decision makers hastily embraced such tactics without serious reflection due to their pre-existing discomfort with a group whose beliefs and nature they neither understood nor earnestly attempted to ascertain.

Whereas in dealing with a routine dealer or gun owner, BATF may have simply conducted an inventory and inspection of controlled part kits and weapons recorded as being Koresh's possession per federal firearms licensing, the agency seemed to view the Davidians as a subversive and impenetrable collection of religious extremists. Koresh's status as the group's spiritual leader obviously played a role in this determination, but the agency seemed disinclined either to deal with Koresh, Fatta, and Schroeder as individual potential violators or to communicate with them in an open and direct manner. The fact that it also did not attempt to purchase or transfer a restricted weapon to or from the group, to effect an arrest or seizure at the Mag Bag or other location off compound, or to otherwise lure Koresh away from Mount Carmel indicates the agency viewed an assault as the only reasonable course of action. The 1996 congressional investigation would in fact determine that Koresh could have been arrested away from Mount Carmel and that BATF "made erroneous assumptions" in determining otherwise.¹³⁸ Underlying

¹³⁶ U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco*, 309.

¹³⁷ Tabor and Gallagher, *Why Waco?*, 101.

¹³⁸ U.S. House of Representatives Committee on Government Reform, 14.

organizational motives including a desire by BATF executives to increase the agency's stature through a successful large-scale raid are often cited as contributing to this decision. This explanation notwithstanding, the combined effect of group opacity, atrocity tales by apostates, and governmental misunderstanding of the Davidians' ideology and worldview certainly contributed to this official mentality.

1. Probable Cause Deficiencies

Though local Assistant U.S. Attorney (AUSA) Bill Johnston believed there was sufficient evidence to justify a search warrant based on probable cause, in late November 1992, BATF headquarters rejected SA Aguilera's initial July report as insufficient. Undeterred, SA Aguilar interviewed numerous concerned family members of Davidian adherents, apostates, and aforementioned "anti-cult expert" Rick Ross, in order to develop additional circumstantial evidence in support of a warrant. Though Ross would be influential throughout the case and siege, he possessed no academic credentials in religious studies.¹³⁹ Ross likewise appears to have made a career of leveraging his interactions with "deprogrammed" subjects, cults, and law enforcement interventions into paid interviews, sensational "tell all" accounts, and media appearances.

Interestingly, the official Department of Justice report on the events at Waco would later downplay the "unsolicited offers" of assistance from Ross and a second anti-cult activist named Kelli Waxman, both of whom are referred to as "self-described cult experts" from whom the FBI reportedly never solicited advice nor assistance. The report makes a point to note, "the FBI did not 'rely' on Ross for advice whatsoever during the standoff," and, "treated the information Ross supplied as it would any other unsolicited information received from the public: it evaluated the credibility of the information and treated it accordingly."¹⁴⁰ Barkun notes, "the report makes no mention of whether after the evaluation, the Bureau found the information credible, or what, if anything, it did with the information after that point," and that "[these] omissions...constitute at least

¹³⁹ Wessinger, *How the Millennium Comes Violently*, 60.

¹⁴⁰ U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco*, 192.

circumstantial evidence that the information was deemed credible and used.”¹⁴¹ Regardless, the same can likely not be said for the impact “experts” such as Ross had by fulfilling an information void and providing media outlets—and thus the consumers—with a one-sided and personal agenda-driven assessment of the Davidians, thereby influencing public perceptions and political will against the community.

Aguilera cited apostates who reported that members surrendered their assets to Koresh, who himself controlled all aspects of life on the compound and was allowed to have sex with all female members of the group.¹⁴² He likewise referenced reports from recently departed Davidians that suggested Koresh was armed constantly, had led followers on live-fire shooting exercises, and was observed with what they believed to be machineguns and pineapple grenades.¹⁴³ One former member also reported having been physically restrained at Mount Carmel for three months prior to her eventual departure, an account corroborated by her sister.¹⁴⁴ In particular, the apostates cautioned the BATF that Koresh would not surrender peacefully and that any siege would lead to a mass suicide by the Davidians, though Koresh had indicated neither such tendencies during his 1987 arrest and prosecution on attempted murder charges nor had Ross and Jewell’s previous mass suicide warning come to fruition.¹⁴⁵ Collectively, the sensational information gleaned from disaffected former members and “expert” references painted a deeply disturbing, though subjective and unbalanced, picture of the Davidians and Koresh.

Here again, the circumstantial evidence SA Aguilera used to bolster his affidavit was largely immaterial to the alleged firearms violations. Rather than develop hard evidence that weapons were in fact being illegally modified or explosive devices constructed without authorization, Aguilera drapes tenuous allegations of illegal behavior

¹⁴¹ Michael Barkun, “Millenarian Groups and Law Enforcement Agencies: The Lessons of Waco,” *Terrorism & Political Violence* 6, no. 1 (1994): 86. 75–95

¹⁴² U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 27.

¹⁴³ *Ibid.*, 28.

¹⁴⁴ *Ibid.*, 29.

¹⁴⁵ Wessinger, *How the Millennium Comes Violently*, 98.

with sensational, atrocity-tale laden imagery of a deviant religious cult led by a gun-obsessed madman. The opaque nature of Mount Carmel lent credibility to these available and mutually affirming information sources, all of whose anti-Davidian agendas should have prompted official circumspection of their claims. Motivated to somehow leverage their statutory powers to intervene and preempt Koresh's alleged morally repugnant activities, the BATF likely fell victim to operational assumptions and emotional bias toward the community. The resulting investigative momentum appears to have distracted decision makers' objective assessment of the available facts, leading them to pursue and approve a series of operational steps that compounded this organizational commitment towards a decisive and dramatic disruption of a emotionally charged yet largely contrived collective threat from the entire Mount Carmel community.

The Branch Davidians' negative portrayal in the media likely further shaped these preconceptions and prejudices held by governmental officials, simultaneously confirming any beliefs held by Koresh and other Davidians regarding their persecuted status. While in Australia, Breault conveyed his defector's tale to Martin King of the Australian exposé documentary program *A Current Affair*. King, in turn, arranged a visit to Mount Carmel under the guise of a "public relations exercise" when in fact he was there to "expose [Koresh] as a cruel, maniacal, child-molesting, pistol-packing religious zealot who brainwashed his devotees into believing he was the Messiah."¹⁴⁶ A year later, the *Waco Tribune-Herald* published an investigative series on David Koresh, titled "The Sinful Messiah." The series, first published on February 27, 1993, immediately before the initial raid, offered a one-sided assessment of the Davidians and included interview material from Breault and Ross. Reporters failed to include alternative perspectives from either the Davidians or Koresh himself or to seek objective assessments from new religious movement scholars. Due in part to its release immediately before the raid, this negative account would serve as the initial source of information for media reporting on Waco.¹⁴⁷ The subjective and obviously agenda-driven nature of both reports was likely unapparent

¹⁴⁶ Tabor and Gallagher, *Why Waco?*, 84.

¹⁴⁷ Wessinger, *How the Millennium Comes Violently*, 98.

to consumers and officials alike, as was the fact that root material for both accounts were largely drawn from the same disenfranchised and biased sources.

2. A Flawed Assault Plan Develops

Despite the paucity of evidence suggestive of a community-wide criminal conspiracy, officials planned a tactical assault that treated all Davidians as if they were a criminal threat. Though planners were likely focused on the possibility (as would indeed be later manifested) that group members would fiercely defend the compound from assault, such defense of one's imminent domain—as this compound was to over 130 people—is well established as legally defensible regardless of whether criminal or non-criminal actors are present or intermixed. It is in fact noteworthy that Texas has an especially strong legal tradition of personal protection and defense of imminent domain, though no such similar federal law protects defense against government officers. According to the Texas Penal Code, resisting search or arrest with deadly force is considered justified, “if, before the actor offers any resistance, the peace officer...uses or attempts to use greater force than necessary to make the arrest or search...”¹⁴⁸ The reasonability of the Davidians' violent defense of the compound would later be confirmed during the trial of 11 Davidians who survived the Mount Carmel tragedy, the trial at which all 11 were found not guilty of murder and conspiracy charges, and three defendants innocent of all charges.¹⁴⁹ In addition, BATF agents may rightly have assumed that Branch Davidians, in particular Koresh's “Mighty Men,” would be inclined to defend their charismatic leader. Nevertheless, by organizing an assault against a multi-family domicile whose occupants most assuredly included innocent persons having no connection with the criminal charges for which a warrant was issued, law enforcement officials unreasonably categorized all Davidians as a mass threat. In reality, the group constituted a fearful and distressed set of individual actors whose defensive response to unsolicited violence was foreseeable, particularly given their collective eschatological beliefs regarding an impending apocalypse.

¹⁴⁸ Reavis, *The Ashes of Waco*, 281.

¹⁴⁹ *Ibid.*, 296.

3. Misperceptions about Davidian Women

Whereas federal law enforcement planners apparently overestimated the criminal threat posed by the Davidians as a whole, they underestimated the potential threat emanating from the female members of the community. The BATF tactical assault plan hinged on a mistaken belief that if agents could separate the male community members from the suspected weapons cache, they would minimize the risk of armed resistance. Reports suggesting Koresh occasionally issued rifles to at least five women and surveillance reports that a female Davidian had been observed aiming a rifle from the compound's front door were excused as aberrations or summarily ignored by senior planners.¹⁵⁰ Although agents did consider possible armed resistance from a female member known to be a former police officer, they failed to conceive a potential scenario in which female members defended the compound in the male members' stead. It is highly likely that officials suffered cognitive bias vis-à-vis the potential for violence from female Davidians influenced by official perceptions of an underlying collective incidence of female subservience and exploitation within the group—an incorrect assumption aggravated by the community's opacity.

Both the official BATF operations plan and internal memoranda provide indications of this official presumption of female victimhood within the community. With regard to Koresh, the tactical operations plan notes, "Howell...depicts himself as Jesus Christ incarnate...and he also sexually appropriates all of the female cult members for himself exclusively, to include female children as young as thirteen."¹⁵¹ This information is both immaterial to the legal justification for the search and unnecessary for officer safety and operational security purposes. In fact, such a statement may actually have been detrimental to leadership's assessment of potential opposition, as use of the word "appropriates" suggests a lack of free will among Davidian women, suggesting they would be welcoming to the arrival of "liberating" forces. Docherty surmises that FBI negotiators also, "categorized the women in Mount Carmel as victims on the basis of the

¹⁵⁰ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 147–148.

¹⁵¹ *Ibid.*, Appendix C–5.

negotiators' own normative response to the unusual (in their eyes, deviant) gender relations within the community," thereby assessing the women's decision to prefer sexual relations with Koresh over their own husbands as inconceivable.¹⁵² Had the fact been presented that adult female members, by all accounts, willingly entered sexual relationships with Koresh, it may have altered executives' perceptions about the attitudes and motives of the Davidian women, and thus their likely reaction to governmental intervention. The community's opacity, combined with overreliance on reports from biased disaffected apostates, presumably blinded tactical planners from alternative analyses of the domestic circumstances at the compound.

The official memorandum forwarded by BATF executive planners to their Department of the Treasury superiors announcing the upcoming raid likewise includes immaterial details and assumptions about female Davidians. This memorandum states,

When a member joins the Branch Davidian, he turns over all possessions, including his wife and any daughters. Howell is the only male allowed to have sexual relations with any of the women, and in general the women are not allowed outside the main compound. Howell strips these people of all dignity and his treatment of them is atrocious across the board—from eating habits to sanitary depravation.¹⁵³

Here again, “women and daughters” are categorized as the chattel of male adherents, and the potential that female members choose to be the exclusive extramarital partners of Koresh is not considered. The presumption that members are treated in an inhumane fashion—presumably against their will—is likewise presented as fact. Though officials refrain from explicitly claiming that liberation of intending female absconders currently imprisoned at the compound is an added benefit to this raid, the inclusion of such details in official internal correspondence is suggestive of the operational assumptions of executive leadership with regard to non-male members of the Mount Carmel community.

¹⁵² Docherty, *Learning Lessons from Waco*, 181.

¹⁵³ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, Appendix E-3.

4. “Protecting” the Children

This official presumption that Davidian women and children were held against their will would continue during the subsequent FBI siege of Mount Carmel as well, in spite of evidence to the contrary. Docherty suggests that negotiators, motivated to protect and liberate what in their view were already victimized Davidian women and children, assumed that Koresh, “would be inclined to treat them as bargaining chips to advance his own ends.”¹⁵⁴ Despite severe reservations of many of their mothers, 21 Davidian children were sent out of the compound during the standoff. Some parents felt such acts constituted releasing their children to “Babylonian” society, and many were extremely distraught to discover how authorities allowed the released minors to consume candy and junk food, misbehave, and generally deviate from their previous standards of upbringing. However, Koresh had insisted the children be released, as he felt he could only assume responsibility for his own children and that, as minors, the others could not make their own decisions. Aside from five juvenile girls who desired to remain at Mount Carmel and the children of one other member (who was dissuaded from sending her five children out after seeing how authorities treated those who were remanded to state custody), the only children who were compelled to remain in the compound were Koresh’s 12 biological children.¹⁵⁵

Though securing the release of the 21 children who did survive the siege demonstrated successful negotiation that preserved life, this collective reluctance of Davidian parents to send their children to the care of the state, despite the peril they faced in remaining in the compound, demonstrates both the strength of their religious convictions and conflicted priorities in simultaneously tending to the children’s worldly and spiritual well-being. The fact that certain juveniles expressed a preference to remain likewise indicates that children who were afforded the opportunity to leave declined of their own volition. Ultimately, it appears Davidian minors were captive only insofar as their legal guardians determined their ultimate welfare was best ensured within rather than outside the confines of Mount Carmel—a circumstance that was apparently not

¹⁵⁴ Docherty, *Learning Lessons from Waco*, 181.

¹⁵⁵ Tabor and Gallagher, *Why Waco?*, 73; Wessinger, *How the Millennium Comes Violently*, 72–73.

integrated into negotiators composite understanding of the group and leader with whom they dealt.

Perhaps the most flagrant aberration regarding official concern for the safety of the Davidian children who remained in the compound involved the deliberations and planning surrounding the final FBI assault on April 19. The FBI's use of over 400 ferret rounds of CS gas against the compound seems entirely at odds with official statements citing imminent safety concerns for the Davidian children as justification for ending the siege in this manner. Given that the federal government was a signatory of the 1993 Chemical Weapons Convention in Paris pledging not to use this gas in warfare, it would seem to be outright negligent that federal officials would countenance use of this compound against minors and pregnant mothers in a law enforcement context.¹⁵⁶ The FBI assault plan, approved by Attorney General (AG) Reno on April 17, stipulated that a team of social workers would be present to wash any chemicals off children using portable showers as they exited the compound. However, the FBI officials failed to contact the lead social worker on April 19 when the raid began, and later stated they did not know if anyone was departing the compound.¹⁵⁷ The 1996 House of Representatives majority report on the tragedy would later critique the FBI's use of CS gas, noting that the assault plan was "fatally flawed," and that "the FBI failed to demonstrate sufficient concern for the presence of young children [and] pregnant women."¹⁵⁸

As with other closed communities, the reports of child abuse seemed to draw intense scrutiny and evoke an eagerness to intervene from even the most senior homeland security decision makers, at times pushing the bounds of sound legal process. For instance, laudable concern for the Davidian children based on unfounded reports of ongoing abuse during the siege would later be instrumental in persuading Attorney General Janet Reno to approve the fateful FBI assault plan using CS gas. In her comments to the press on April 19, AG Reno noted that more than any other factor,

¹⁵⁶ Wessinger, *How the Millennium Comes Violently*, 80.

¹⁵⁷ *Ibid.*, 77.

¹⁵⁸ *U.S. House of Representatives Committee on Government Reform*, 4.

reports of ongoing child abuse compelled her to embrace immediate tactical measures.¹⁵⁹ However, the following day, FBI director Sessions would release a clarifying statement noting that in fact the FBI had developed no evidence of child abuse during the 51-day siege.¹⁶⁰ The official Department of Justice report on the events at Waco also noted, “historical evidence suggested that Koresh had engaged in child physical and sexual abuse over a long period of time prior to the [B]ATF shootout on February 28,” but notes, “this evidence was insufficient to establish probable cause to indict or proof beyond a reasonable doubt to convict, but it was sufficient to be relevant to the decisionmaking [sic] process involving the proposed tear gas plan.”¹⁶¹ The fact that hearsay from unreliable and disaffected Davidian apostates continued to be presented as justification for violent federal actions against the group (ironically a decision that itself endangered the welfare of the Davidian children) even after the April 19 tragedy indicate the laudable and well-intentioned but ultimately unsubstantiated concerns shared by governmental actors.

In addition to the intense scrutiny allegations of child abuse involving this opaque community generated among law enforcement officials, the visceral nature of such claims also seemed to have distorted decision makers’ abilities to objectively consider refuting information. Prior to the final stages in the federal siege on Mount Carmel, evidence that contradicted the child abuse allegations or reports of intolerable conditions for Davidian children seems in fact to have been summarily ignored if not also suppressed by authorities. On March 8, barely a week after the initial BATF assault on Mount Carmel, Branch Davidian Steve Schneider conducted videotaped interviews of 22 members of the group inside Mount Carmel and presented these tapes to the FBI. These tapes showed no indications of child abuse or endangerment, and in fact indicated strong and caring family relationships by those members interviewed. The Justice report would later note,

Each person on the video—male and female, young and old—spoke in a calm, assured tone of their desire to remain inside, even after the

¹⁵⁹ Tabor and Gallagher, *Why Waco?*, 19.

¹⁶⁰ U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco*, 226.

¹⁶¹ *Ibid.*, 215.

experience of the [B]ATF raid only a few days earlier...The abiding impression is not of a bunch of ‘lunatics,’ but rather of a group of people who, for whatever reason, believed so strongly in Koresh that the notion of leaving the squalid compound was unthinkable.¹⁶²

It is unknown why unshaken belief in disturbing and pervasive child abuse within the compound persisted despite such photographic evidence to the contrary or why this video did not at least prompt a reassessment of previously developed conclusions regarding the nature of the Davidian community. Prior to approving the FBI’s final assault plan using CS gas, AG Reno was neither presented with any portion of these videos showing Branch Davidian members lovingly interacting with their children, nor was she made aware of Koresh’s routine and innocuous contact with his own progeny, the images of which may indeed have been “relevant to [her] decision-making process involving the proposed tear gas plan.”¹⁶³ Indeed, the FBI’s exclusion of such evidence arguably restricted AG Reno’s ability to fully assess the situation within the compound, denying her a visual and emotional counterweight to her own visceral concerns for the besieged minors. Koresh undoubtedly pursued unorthodox sexual relationships with young and underage girls that likely constituted statutory rape and polygamy. However, the breadth and depth of the collective enforcement actions taken to combat such potential crimes, as well as an unfounded general assumption that such behavior permeated the entire community, seemed entirely disproportionate to the actual situation at Mount Carmel—a collective error in official judgment that was almost certainly aggravated by the opaque nature of the Davidians and a resulting tendency, in the absence of situational awareness and visibility into Mount Carmel, to fear the absolute worst.

5. Negotiations for “Hostage” Release

Departures of adult members and statements made by Koresh indicate willing adult Davidians were also free to depart Mount Carmel, though official interpretation of community members’ behavior gravitated towards a hostage situation interpretative

¹⁶² Ibid., 205.

¹⁶³ Tabor and Gallagher, *Why Waco?*, 19.

framework. In addition to the children released from the compound, 14 adults departed/surrendered during the siege. The FBI would later allege that individuals that departed Mount Carmel, “were ‘expelled’ because Koresh considered them weak or troublemakers.”¹⁶⁴ Ironically, the incongruities of such assumptions and depth of this official incomprehension of the Davidians are contained within the same official report in which this assessment was presented. FBI negotiators continually pled with Koresh to “release” members and discounted his assertions that Davidians were free to depart. This official agenda of freeing additional Davidians from the compound conflicts directly with the expressed preferences of community members with whom they spoke, as approximately 50 Davidians explicitly told negotiators that they had no desire to depart the compound.¹⁶⁵ It should also be noted that besieged Davidians were simultaneously perceived as hostages and homicide suspects in the death of four BATF agents, further confusing both negotiators’ release efforts and adherents’ incentives for leaving the compound. Perhaps the ultimate expression of group cohesion and individual desire to remain in Mount Carmel was demonstrated by Davidian Ruth Riddle, who was forcibly extracted by an FBI agent during the final stage of the siege as she attempted to retreat into the burning compound rather than flee to safety.¹⁶⁶

During the last recorded negotiation session with Koresh on April 18, 1993, FBI negotiator “Henry” implores Koresh to release additional members, indicating authorities both assumed Koresh maintained either physical or spiritual control over the entire community and dismissed the possibility that individual Davidians chose to remain of their own volition. During this exchange, Koresh states, “whoever wants to go out can go out,” later asking nearby Davidians “do fifty of you want to go out?” Henry responds, “You don’t have to ask. All you have to do is say, ‘look, I want 50 volunteers,’ and they’ll come out.”¹⁶⁷ Unable to comprehend the Davidians’ worldview and its manifestation in the community’s behavior, the FBI appears over the course of the siege

¹⁶⁴ U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco*, 3.

¹⁶⁵ *Ibid.*, 208.

¹⁶⁶ *Ibid.*, 299.

¹⁶⁷ Wessinger, *How the Millennium Comes Violently*, 110, 112.

to have fallen into a default “hostage negotiation” interpretative framework. The opaque nature of the community certainly contributed to, if not entirely caused, officials’ inadequate understanding of the situational landscape from the Davidians’ collective point of view.

6. Tactical Challenges of Situational Awareness Deficits

In considering options for a raid and warrant search of Mount Carmel, numerous issues contextualized by the Davidians’ closed nature and the lack of available situational awareness regarding the compound influenced BATF agents towards use of dynamic entry tactics. Early in the planning process, AUSA Johnston advised BATF that he would not authorize a siege-style operation involving the establishment of a perimeter, as this type of operation could allow Koresh and others to destroy evidence, which would hinder possibilities for a successful prosecution. BATF Little Rock Resident Agent in Charge (RAC) William Buford, a participant in the 1985 BATF and FBI siege of CSA fortified compound in Arkansas, was likewise an opponent of any siege tactics. Throughout the Mount Carmel planning sessions, Buford repeatedly recalled the three-day CSA siege, during which CSA members destroyed many of their automatic weapons and illegal silencers, and therewith evidence of many of their crimes.¹⁶⁸ The specter of a mass suicide event presented by interviewed apostates dissuaded others from countenancing a potential prolonged standoff. Additional tactical considerations regarding the terrain surrounding the compound led BATF planners to discard siege tactics as too dangerous.¹⁶⁹ Finally, reports from previous Branch Davidians indicated the group maintained large stores of provisions and had an independent supply of well water, suggesting any siege would be a prolonged affair. Members were also acclimated to austere living conditions, meaning a siege would not significantly disrupt the community’s current lifestyle.¹⁷⁰

¹⁶⁸ U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 38.

¹⁶⁹ *Ibid.*, 44.

¹⁷⁰ *Ibid.*, 46.

Given that Koresh himself was the primary target of enforcement operations, BATF did consider alternative tactics to separate him from his followers or otherwise lure him away from the compound. However, numerous setbacks and complicating factors prevented an arrest of Koresh away from the compound. First, BATF surveillance did not observe Koresh leaving the compound. It was later determined that although plans were developed on this premise, agents had not definitively established whether Koresh ever left the compound.¹⁷¹ Second, an attempt to lure Koresh to a contrived meeting with the Texas Department of Protective and Regulatory Services failed when social worker Joyce Sparks's supervisor refused that agency's involvement. Finally, an attempt to obtain a state warrant against Koresh on statutory rape charges, which would established the basis for a meeting with local officials in town, failed when the victim refused to testify.¹⁷²

BATF planners ultimately chose a dynamic entry plan that was highly contingent on the element of surprise and relied heavily on critical pieces of dated intelligence. The lack of observable sentries or armed guards, reported presence of high caliber weapons, and agents' belief that Davidian men could be successfully separated from the suspected location of the group's arsenal convinced planners that a dynamic raid was the course of action most likely to succeed.¹⁷³ As mentioned above, federal decision makers failed to consider that female Davidians might defend the compound and could operate without direction from Koresh. They likewise failed to build sufficient contingency options into their plans or prepare for a barricade/siege fallback scenario, as well as ignored numerous indications that they had lost the element of surprise, upon which the success of their dynamic entry plan relied.

D. THE FLAWED OPERATIONAL FRAMEWORK

Though a comprehensive analysis of the siege and lengthy negotiations between federal law enforcement and the Branch Davidians is beyond the scope of this study, a

¹⁷¹ Ibid., 136–137.

¹⁷² Ibid., 64.

¹⁷³ Ibid., 53.

few key points related to deliberations influenced by the community's closed nature are worthy of note. Prior to the February 28 raid, BATF officials systematically eschewed options for open dialogue with the group despite Koresh's openness to negotiations, instead pursuing a tactical assault of Mount Carmel as the initial form of overt contact with the community. In doing so, federal stakeholders framed all future interactions with the Davidians in a context of inter-organizational mistrust, governmental hostility, and compelled concessions under duress, thereby creating barriers to the establishment of substantive and objective communication channels. By waiting until after a violent assault to establish a rapport with a closed group that was inherently distrustful of governmental intervention, officials severely encumbered their prospects for convincing the Davidians to respect legal process. The Davidians, organized as an opaque community of true believers, simultaneously interpreted official interventionist actions as the manifestation of prophesized cataclysmic events that aligned perfectly with their apocalyptic eschatology. The nature and sincerity of these beliefs only further diminished stakeholders' prospects for a peaceful and equitable resolution under these now aggravated tactical circumstances.

1. Discounting Religious Fervency

A second cognitive deficiency on the part of federal law enforcement involved a failure to concede the sincerity of the group's religious convictions and incorporate validation of these beliefs into their secular negotiation strategy. Throughout their attempts to coerce the Branch Davidians to submit to the rule of law, FBI agents failed to comprehend that the group would only pursue options they believed to be in accordance with their interpretation of biblical imperatives.¹⁷⁴ Unlike the FBI negotiators, theological scholars Arnold and Tabor continued to analyze Koresh's theology during the siege by reviewing his taped sermons and speaking with incarcerated Davidian Livingstone Fagan. Based on the Davidians' belief that biblical prophecy related to topical events and could be continually reinterpreted by their prophet, they ascertained that from the group's viewpoint, the outcome of the siege was not predetermined and

¹⁷⁴ Wessinger, *How the Millennium Comes Violently*, 57.

could be altered based on strategic dialogue with Koresh. Fagan interpreted the crisis as a religious test of faith in which the group's dedication to God's prophet was being determined.¹⁷⁵ Unfortunately, at no time during its investigation or prior to the initial raid did BATF consult religious such religious experts about the Davidian's beliefs or practices. After assuming operational control, the FBI likewise dismissed offers by religious scholars who attempted to voluntarily offer their services to negotiators. Sullivan notes, "in general, the FBI commanders and decision-makers dismissed opinions that religion was an important operating factor," even ignoring the assessment of their own behavioral scientist Peter Smerick that tactical commanders should incorporate the Davidian's religious worldview into their negotiation strategy.¹⁷⁶

The FBI appears to have failed to recognize that Koresh, in preaching to negotiators about salvation in God's Kingdom and attempting to convert them to the Davidian's faith, was in fact broadcasting the group's "ultimate concern." Negotiation aimed at resolution within the context of the Davidians' prophetic understanding of current events may have allowed peaceful resolution, but the FBI rejected such theological discussions as not constructive. On March 15, FBI negotiators were directed to no longer listen to Koresh's "Bible babble." That same day, FBI commanders denied a request by Steve Schneider to let biblical scholar Dr. Arnold attempt to assist Koresh in finding an alternative hermeneutic showing God wanted an end to the siege.¹⁷⁷

The Justice Department report would later underpin this apparently prevailing misunderstanding among officials of the communal cohesion, resiliency, and psychological explanation for the Davidians' devotion towards Koresh, suggesting:

The key to Koresh's hold on his followers was his ability to recite lengthy portions of the Bible from memory, and to "harmonize" disparate, seemingly unrelated scriptures by showing how they 'tied together.' This ability, combined with Koresh's charismatic/mercurial personality and the

¹⁷⁵ Ibid., 92.

¹⁷⁶ Sullivan, "No Longer the Messiah," 218–219.

¹⁷⁷ Wessinger, *How the Millennium Comes Violently*, 92–93.

low self-esteem of his followers, created an environment in which Koresh was elevated to near God-like status.¹⁷⁸

What religion does not involve a priesthood or clergy that has deep familiarity with its sacred texts and is relied upon to interpret ambiguity? Moreover, claims by the FBI or department to have been able to assess the collective self-esteem of over 130 Branch Davidians while concurrently orchestrating an armed siege against their domicile are tenuous at best. It is more likely that officials assumed that followers were simply duped by a charismatic criminal rather than motivated by an arcane but well-established set of millenarian beliefs that had evolved over 50 years after splitting from a well-established and recognized vein of domestic Christian Protestantism.

It appears homeland security stakeholders' misinterpreted the Davidians preoccupation with reclusive self-sufficiency as an indication of open defiance rather than judicious preparations for a coming end-time. Though Koresh and the Davidians took measures to prepare for Armageddon, their actions were entirely defensive and reactive in nature. The group stockpiled food, fuel, and ammunition, and fortified Mount Carmel structures in preparation for a prophesized siege by the forces of Babylon.¹⁷⁹ However, as Eugene Gallagher's study of Koresh's statements and sermons reveals, Koresh did not direct adherents to pursue independent violent action.¹⁸⁰ Rather, Koresh maintained that Davidians would support God's side in Armageddon, with God determining when and how violence would be initiated.¹⁸¹ Granted, as Koresh was alleged to have privileged understanding of esoteric biblical messages and spoke as God's prophet to his followers, one could allege that Koresh himself had the ability to dictate when and how this Armageddon would occur. Nevertheless, by not validating the depth and sincerity of the Davidians' beliefs, including the community's perception that current events were confirming pre-apocalyptic events contained in the Bible and

¹⁷⁸ U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco*, 206.

¹⁷⁹ Wessinger, *How the Millennium Comes Violently*, 102.

¹⁸⁰ Eugene V. Gallagher, "'Theology Is Life and Death': David Koresh on Violence, Persecution, and the Millennium," *Millennialism, Persecution, and Violence: Historical Cases*, ed. Catherine Wessinger, 82–100 (Syracuse, Syracuse University Press, 2000).

¹⁸¹ *Ibid.*

prophesized by their spiritual leader, federal officials repeatedly misinterpreted the Davidians' statements and actions as offensive and belligerent rather than reactive and defensive in nature.

2. Analysis of Mistaken Official Assumptions

Though BATF officials attempted to focus their efforts on developing probable cause evidence of federal firearm infractions, their zealous approach to many aspects of the investigation seemed influenced by the alternative and widely opaque nature of the Davidians' views and lifestyle. One must question if the suspected infractions of individual group members and Koresh (i.e., BATF's area of jurisdiction), absent the contextual aura of an obscure, chiliast religious sect led by an abusive, sex crazed, seemingly unstable megalomaniac (i.e., allegations related to "atrocious tales" from apostates), would have drawn such interest from the agency. Justification included in official reports regarding the BATF investigation seems to further argue this very point, noting: "While reports that Koresh was permitted to sexually and physically abuse children were not evidence that firearms or explosives violations were occurring, they showed Koresh to have set up a world of his own, where legal prohibitions were disregarded freely."¹⁸² As elaborated above, from the view of BATF investigators, the basis of the potential firearms violations is primarily regulatory in nature and restricted to a handful of actors. Only when these suspected potential weapon crimes was associated with an opaque, seemingly fanatic group at a shared domicile did BATF's collective suspicion apparently metastasize into official presumption of criminal conspiracies and a compelling governmental interest in intervention despite countervailing evidence and alternative investigative options.

Throughout its investigation, BATF did correctly recognize that the special circumstances surrounding the Davidians' status as a closed religious community created additional sensitivities in any governmental efforts at intervention, alleging, "[B]ATF would have been remiss if it had permitted considerations of religious freedom to insulate

¹⁸² U.S. Department of Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms*, 27.

the Branch Davidians from such an investigation.”¹⁸³ BATF’s internal investigation suggests the bureau, “recognized early the delicacy of an investigation of such an unorthodox community” and responded appropriately by designating SA Aguilera’s case as “sensitive,” leading to additional scrutiny by supervisors, “of a case that was perceived at the outset to have the potential for raising thorny religious issues as well as difficult safety issues, particularly regarding the women and children living at the Compound.”¹⁸⁴ Though it would seem likely such a designation could well have been deemed prudent based simply on the size and makeup of the potentially impacted and cohabiting group, these statements do indicate a modicum of due diligence on the part of BATF investigators.

Beyond such sensitivities, BATF statements regarding the closed nature of the Davidians seem to indicate the unknown and unknowable nature of the community both hampered and directly affected the course of the investigation. The Treasury report notes:

Aguilera faced two significant obstacles in his investigation. First, he had to overcome the largely antisocial, isolated routing of Compound residents. As a rule, residents never spoke to outsiders about Compound activities and harbored deep suspicions of law enforcement personnel. Second, Aguilera wisely sought to keep his investigation a secret from Koresh and his followers in order to ensure strategic and tactical flexibility in case search or arrest warrants needed to be served. Aguilera sharply circumscribed his inquiries about Koresh to third parties, including arms dealers and former cult members, for fear of alerting the Branch Davidians that they were under scrutiny.¹⁸⁵

In short, the group’s opaque nature confounded investigative efforts into their activities and intentions while simultaneously prompting BATF to itself remain secretive about its scrutiny of the group. Resigned to this confidential operational mindset, investigators were blinded to the numerous invitations for open dialogue offered by Koresh and the group, both before and during the siege. Such rebuffs likely further confirmed Davidians’ suspicions that the actual motivations surrounding these secretive

¹⁸³ Ibid., 120.

¹⁸⁴ Ibid., 121.

¹⁸⁵ Ibid., 123.

governmental efforts were more akin to persecution, intrusion, or hostility toward the group than overt regulatory interest in potential gun infractions in a good-faith spirit of mutual respect and open dialogue.

A second aspect of this justification—the extensive use of the referent ‘cult’ in official documents associated with the raid and subsequent investigations—deserves additional mention. Tabor notes a “subtly damning characterization of Koresh’s ‘cult’ is woven through [BATF’s] account” use of this term, “carries self-evident force in Aguilera’s testimony,” and that it is used 14 times in the justifying criminal affidavit without supporting context or qualification.¹⁸⁶ According to general convention, the word “cult” carries a social stigma that negatively charges any group to whom it refers. By restricting their contextual perspective to that provided by apostate “cult” members who “escaped” the group, officials limited the aperture by which they could assess Mount Carmel and Koresh in objective terms. Simultaneously, the Davidians’ closed, distrustful, and—to the unbeliever—widely unfathomable lifestyle, religious practices, and depth of conviction only exacerbated any preconceptions that these officials may have regarding cultism and the dangers stemming therefrom.

A comprehensive discussion of the criminal actions that took place both during and following the ill-fated attempted dynamic entry and siege of the Mount Carmel compound is likewise beyond the scope of this study. Sadly, it appears that the collective federal law enforcement actions manifested Koresh’s prophecies of a U.S.-led assault and martyrdom at the hands of Babylon, thereby seemingly corroborating his predictions for the onset of the apocalypse. The true sincerity of Koresh’s spiritual convictions and his ultimate purported divinely inspired objectives for the group will unfortunately never be known. The highly suspicious and, by all reasonable accounts, most likely outright criminal activity undertaken by certain individuals at Mount Carmel is indisputable. The sum total of all circumstances that led to the tragic culmination on April 19, however, indicate a governmental rush to intervention based on flawed assumptions and misinformation, an organizational inability to fathom or pursue open dialogue with

¹⁸⁶ Tabor and Gallagher, *Why Waco?*, 101.

Koresh and the Davidians, and a disproportionately elevated perception of the severity and immediacy of the threat posed by this community.

Koresh was almost certainly committing statutory rape of underage girls as well as engaging in polygamous relationships. He and his associates had acquired a large number of assault rifles, purchased replacement parts for restricted weapons he did not own, and possessed the tools and technical means of converting these to illegal automatic weapons; it would subsequently be determined Koresh or one of his compatriots did just that. Additionally, he had acquired the parts and materials needed to construct a large number of bombs or other destructive devices. What both Texas protective service officials and federal law enforcement lacked in relation to these means for committing criminal offenses was either a criminal complaint by a victim or witness or a verifiable indication of criminal intent. Because Branch Davidian community members were widely suspected of tolerating, if not also aiding and abetting Koresh's activities, a complaint from within the group was neither expected nor forthcoming. BATF undercover operations had been equally unsuccessful in generating a probable cause affidavit, leaving reasonable suspicion of criminal intent as the sole available investigative inroad. Given the Davidians' closed and secretive nature, however, law enforcement was left to speculate regarding the existence and malevolence of this intent.

3. Costly Errors

The question then is not whether any criminal actions had taken place at Mount Carmel, but rather whether an armed federal assault directed at the entire community rather than targeted action directed at certain individuals was judicious and necessary. The collective costs for this intervention extend beyond the human losses in death and injuries sustained by both sides, psychological trauma, orphaned children, and shattered families. During the initial raid, four BATF agents were killed and 20 wounded, along with six Davidian fatalities and four injured. According to DOJ's report, 75 Davidians died during in the April 19 fire, including 21 children under the age of 14—a figure that does not include two unborn fetuses who also perished.¹⁸⁷ Following the event, BATF

¹⁸⁷ Newport, "'A Baptism by Fire,'"61.

director Stephen Higgins resigned, along with five additional high-ranking BATF officials.¹⁸⁸ Though it would attribute “ultimate responsibility” for the Mount Carmel tragedy on the “criminal conduct and aberrational behavior” of Koresh and the Davidians, a congressional report would later excoriate the BATF’s handling of the Branch Davidian investigation, characterizing the agency’s actions as “grossly incompetent.”¹⁸⁹

The monetary costs of the raid and standoff have not been disclosed and are difficult to estimate. A 1999 General Accounting Office (GAO) study estimated the costs of military assistance provided in the form of surveillance, reconnaissance, and transport services, the use of multiple helicopters, and tactical ground vehicles to total approximately \$1 million alone.¹⁹⁰ A minimum of 719 law enforcement officers were involved in the operation on scene on any given day. This included the participation of 668 FBI personnel in the operations at Mount Carmel, whose operational footprint averaged 217 agents and 41 support personnel on hand per day. Personnel from BATF, U.S. Customs Service, Waco Police Department, McLennan County Sheriff’s Office, Texas Rangers, Texas Department of Public Safety Patrol, U.S. Army, and Texas National Guard also took part.¹⁹¹ Simply based on the manpower dedicated to establishing a secure perimeter and supporting negotiation and security needs, expenditures could easily be estimated in the millions of dollars.

A not insignificant body of literature also exists regarding alleged governmental malfeasance, tolerated acts of retribution against and hostility towards the Davidians, purposeful disregard for long established negotiation tactics, intra- and inter-agency disputes, and post-disaster attempts at covering up official misconduct. In particular, conspiracy theorists and anti-government actors continue to place blame for the Mount Carmel conflagration on federal agencies that they allege initiated the fire to avenge the death of the four BATF agents because of the Davidians’ refusal to respect their

¹⁸⁸ Tabor and Gallagher, *Why Waco?*, 3.

¹⁸⁹ *U.S. House of Representatives Committee on Government Reform*, 3.

¹⁹⁰ U.S. General Accounting Office, *Military Assistance Provided at Branch Davidian*, 2.

¹⁹¹ U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco*, 10.

authority, or both. The Justice report in particular attempts to counter such assertions, asserting in response to suggestions that the tactical vehicles used to insert CS gas into the compound also initiated the fire that “there is conclusive evidence that the Branch Davidians started the fire. Nevertheless, our findings may not convince those who believe what they want to believe. We are confident, however, that our findings represent the truth.”¹⁹² The authors’ usage of such defensive semantics and restriction of investigators analysis to only those baseless allegations of a surreptitious vehicle-borne incendiary attack that had surfaced prior to the report’s publication rather than a full and factual account of all known potential explanations for the fire’s initiation would later provide additional conspiratorial fodder. Following 1999 revelations that the Department of Justice withheld evidence that the FBI had utilized incendiary projectiles at the Mount Carmel compound on the day of the fire, Branch Davidian survivors and family members filed a wrongful death lawsuit, which, although it exonerated the government of all wrongdoing, “was based on a constricted array of evidence and bewildering procedural rulings.”¹⁹³ The collective resulting intangible costs in loss of public confidence in the government, future reluctance by similar groups to cooperate with federal law enforcement, and international indignation at U.S. domestic treatment of a religious minority are likewise inestimable.

4. Viable Alternative Outcomes

The question then remains: would the development of a legally tenuous investigation and subsequent armed standoff permeated with the inability of an obscure religious sect and maligned federal force to effectively negotiate under duress have occurred if the Branch Davidians had not been an opaque community? Though this may never be determined, there are at least indications that an alternative course was available to homeland security practitioners. During negotiations, the Davidians were reluctant to believe anything federal agents told them, despite FBI efforts to differentiate itself from

¹⁹² Ibid., 307.

¹⁹³ Stuart A Wright, “A Decade after Waco: Reassessing Crisis Negotiations at Mount Carmel in Light of New Government Disclosures,” *Nova Religio* 7, no. 2 (2003): 102–103, doi:10.1525/nr.2003.7.2.101. 101–110

BATF. However, members of the community, including Koresh, expressed their respect for McLennan County Sheriff Jack Harwell, leading the FBI on March 13 to approve an unconventional face-to-face meeting between the sheriff, accompanied by a FBI agent, and two Davidians, including Steve Schneider. Despite success in establishing a rapport with Schneider and making what the FBI described as “significant inroads,” a second meeting failed to materialize, presumably due to Koresh’s lack of confidence in Schneider.¹⁹⁴ The Davidians reportedly also trusted the Texas Rangers, and although the Rangers offered their assistance, the FBI declined their participation in the negotiations.¹⁹⁵

The intense psychological pressures of negotiations under riflescopes’ view rather than selection of inappropriate interlocutors may have doomed this outreach effort. However, the FBI should be applauded for its attempt to leverage Koresh’s familiarity with and trust of Sheriff Harwell towards conflict resolution. As discussed in subsequent chapters, the office of sheriff, as the only elected law enforcement position with whom most communities interact, may enjoy a privileged cloak of official legitimacy among closed groups such as the Davidians. It is unfortunate that federal negotiation and outreach efforts were not pursued in conjunction with Sheriff Harwell prior to the initial raid, as such efforts may have engendered a constructive dialogue, allowing de-escalation of suspicion and fear on both sides. Findings from the 1996 congressional investigation of the Waco tragedy, which include a recommendation that “Federal law enforcement agencies should be open to the assistance that State and local law enforcement agencies may be able to provide” would seem to buttress the utility of increased exploitation of such non-federal assets.¹⁹⁶

Additional recommendations from the congressional investigation are also applicable to opaque communities in general. Of the 17 recommendations contained in the report’s executive summary, two appear to be applicable to most if not all cases in

¹⁹⁴ U.S. Department of Justice, *Report to the Deputy Attorney General on the Events at Waco*, 133–134.

¹⁹⁵ *U.S. House of Representatives Committee on Government Reform*, 59.

¹⁹⁶ *Ibid.*, 6.

which situational awareness regarding a community is not easily obtainable or a group's ideology is arcane or unapproachable from conventional frames of reference.¹⁹⁷ The report recommends, "Federal law enforcement agencies should take steps to foster greater understanding of the target under investigation," noting that, "had the BATF and FBI been better informed about the religious philosophy of the Davidians and the Davidians' likely response to the government's actions against them, these agencies could have made better choices in planning to deal with the Branch Davidians."¹⁹⁸ It also suggests agencies should "revise policies and training to increase the willingness of their agents to consider the advice of outside experts," suggesting steps should be taken to change a corporate culture that eschews assistance from non-law enforcement contributors.¹⁹⁹ Beyond these primary areas for improvement, the report notes that authorities should, "obtain fresh and unbiased information when relying on that information to arrest or search the premises of the subjects of investigations," and generally, "should make every effort to obtain continuous and substantial intelligence."²⁰⁰ Collectively, these recommendations could be applied beyond federal law enforcement to all homeland security stakeholder agencies with regard to their interactions with closed communities.

Expounding on the first recommendation, the report notes:

The subcommittees found troublesome the fact that many of the [B]ATF and FBI officials involved in this matter seemed uninterested in understanding the Davidians' goals and belief system. The views of these officials ranged from assumptions that the Branch Davidian were rational people likely to respond to authorities as would most citizens to a belief that the Davidians were a 'cult' which could not be dealt with in any way other than by force. Seldom did these officials seem interested in actually trying to understand this group of people and their motivations. This attitude was shortsighted and contributed to several of the mistakes that the government officials made at different points from February 28 through April 19.²⁰¹

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid., 14.

²⁰¹ Ibid., 83.

Barkun suggests that lessons of previous encounters should have prevented such shortsightedness, noting,

Had those in policymaking positions correctly learned the lessons of CSA and Randy Weaver, and not been in thrall to the unsupported allegations of the anti-'cult' movement, they would have recognized the true nature of the problem before them: an armed, millenarian group, sincerely (if misguided) religious, in the sense of total commitment to a concept of ultimate things, and living in daily expectation of the end of history.²⁰²

Sullivan underscores such suggestions, noting, "The risk is that, in trivializing religion as a motivation, government officials diminished their capacity to understand the motives and actions of citizens."²⁰³

In addition to accepting one of Koresh's or the Davidians' overtures to dialogue or seeking the development of additional sources of information or recruitment of confidential informants from within Mount Carmel, federal investigators and other homeland security stakeholders could have pursued a number of alternative sources of situational awareness information regarding the compound prior to a dynamic entry warrant search and arrest operation. As a domicile for over 130 individuals, Mount Carmel was certainly subject to numerous housing, health, and safety municipal code and zoning ordinances, as well as building code and equalization/taxation regulatory processes. Officials could have leveraged use of compliance inspection visits or other ruses to obtain current intelligence on the group, as well as to ascertain the welfare of women and minors. Reports of significant construction projects at the property would certainly have provided a viable premise under which to have sought code inspections or other visit by local officials. Given the large population of foreign nationals at the compound—many of whom were determined to be in the U.S. without legal status—BATF and others could have also leveraged the legacy Immigration and Naturalization Service (INS) to obtain access to any alien overstay, schedule adjustment of status interviews with members, or likewise conduct health and welfare visits to the compound under the premise of an immigration inspection or compliance visit.

²⁰² Barkun, "Millenarian Groups and Law Enforcement Agencies," 92.

²⁰³ Sullivan, "'No Longer the Messiah,'" 220.

Though such intrusions may well have telegraphed officials' increased interest in the Branch Davidians' activities, they may have done so in a transparent, legally defensible, and comparative unthreatening manner. Given that the forays into surreptitious intelligence gathering into the closed compound (the undercover house, BATF agent posing as a delivery man, and Rodriguez posing as a potential convert) were quickly unmasked by Koresh and the others, they likely both increased the groups' anxiety regarding "Babylonian" surveillance and preoperational planning and confirmed suspicions that officials were disinterested in peaceful conflict avoidance. In turn, this confirmed the Davidians' apocalyptic narratives, bolstered perceptions of Koresh's powers of prophecy, and validated suspicions that officials rejected attempts at open dialogue in favor of deceit, denial, and violent suppression. Any potential loss of operational security or element of surprise that the aforementioned alternative forthright methods of compelling official interaction with the group and obtaining situation awareness of the Davidians' organizational nature and intentions may have engendered can certainly be viewed as possibly causing far fewer secondary negative conclusions by the object of interest.

Ultimately, though perhaps not the sole causative aspect, the Davidians' opaque nature and its impact on officials' ability to effectively fulfill the aforementioned recommendations must certainly be viewed as the most significant contributing factor to the tragedy. In the lead-up to the BATF raid, an increasingly concerned local populace, a coalition of unreliable yet maligned apostates, various media outlets, the State of Texas, and the federal law enforcement community fused, creating an echo chamber perceived threat, fear, and enforcement urgency. Participant agencies and actors grew increasingly frustrated with the dearth of viable intervention inroads to the Davidians, leading them to seek additional partners. The accompanying lack of situational awareness regarding what may or may not have been occurring at Mount Carmel, combined with suspicious indicators of criminal activity, atrocity tales, and unconventional yet fervent religious beliefs and practices centered around a domineering and conspiratorial self-processed modern-day prophet, proved to be an potent elixir to well-intending stakeholder agencies and decision makers.

Without the benefit of open channels of dialogue through which to resolve both inter-organizational misunderstanding and worrisome potential legal infractions, the trajectory of the Mount Carmel tragedy was set. In the absence of alternative open sources of information regarding the Davidians' capabilities and intent, homeland security agencies were left to expect and prepare for the worst, leading to a seemingly intractable clash of perceptions, ultimate priorities, and world views. And though the Justice report suggests that "nothing would have changed the outcome [at Waco] because the people who remained had no intention of leaving," such a statement is tantamount to an official self-acquittal given that a constructive and educated dialogue between homeland security officials and this closed community was essentially never established.

V. MOVE

“The tragedy was more than an accident, it was a revelation of what we can become if the trappings and procedures of our lives overpower the purposes and potential of our humanity.”

—Commissioner Charles W. Bowser, Esq.
Philadelphia Special Investigation Commission
March 6, 1986

A. BACKGROUND AND CONTEXT

Alternatively viewed as either an anti-establishment alternative lifestyle or new religion amalgamation of counterculture ideologies, the “American Christian Movement for Life” or MOVE existed as an urban opaque community in Philadelphia from approximately 1972 through the mid-1980s. MOVE and its alter-ego Vincent Leaphart, aka “John Africa,” embraced an unapologetically provocative, often conspiratorial, and brazenly proselytistic “back to nature” anarchist ideology that placed the group continually at odds with both its neighboring community and governmental actors. Though the group did interact with both the surrounding community and local media to espouse its beliefs and air grievances, the group maintained a communal structure within what would become barricaded properties to which outsiders and government officials were vehemently denied access. Community and municipal agency frustration with MOVE escalated during its approximately 12 years of existence, culminating in a desperate and deadly police assault on a barricaded MOVE row house in May 1985. After the smoke cleared, 11 members of MOVE—five of them children—had died, 253 citizens of Philadelphia were without homes, and 61 houses had burned.²⁰⁴

As part of its unifying ideology as an opaque community, MOVE neither espoused non-violence as a preferred form of social protest nor were its members entirely law abiding. Many MOVE adherents were charged with numerous, primarily misdemeanor crimes during its existence, though specific members of the group were

²⁰⁴ John Anderson and Hilary Hevenor, *Burning down the House: MOVE and the Tragedy of Philadelphia* (New York: Norton, 1987), xiv.

prosecuted for felonious possession of weapons and destructive devices. Criminal violations stemmed mostly from members' unabashed defense of the group's beliefs and disrespect for governmental authority. During an earlier 1978 police raid on a previous MOVE property, suspected shots were fired by MOVE, multiple officers were injured, and one policeman was killed under unclear circumstances. Despite this precedent, the scope of the 1985 raid, tactical stance, and level of force employed by the Philadelphia Police Department appeared vastly disproportionate to the composite threat assessment derived from the collective circumstances and law enforcement intelligence available to city executives. Of the four felony charges and seven specific crimes for which targeted MOVE members were being sought in 1985, the single charge that would seem to justify such a massive show of force, possession of explosives—proved baseless. The suspected illegal weapons cache at the MOVE residence for which a search warrant was issued was likewise never found.²⁰⁵

After providing a historical background and contextual perspective to the situation surrounding MOVE in the lead up to the 1985 raid, this chapter will analyze a number of the motivations and assumptions that prompted Philadelphia's homeland security community and political establishment to collectively acquiesce that a violent intervention into this opaque community was their only reasonable option. In particular, the city's tendencies to overestimate the threat emanating from MOVE due to its opacity, to conjure tenuous legal justifications for intervention while ignoring available enforcement inroads and to unnecessarily endanger minors and the surrounding public without discernable cause will be explored. Through this examination, the guiding framework of collective assumptions and logical biases adopted by Philadelphia's homeland security establishment and directly influenced by the closed nature of the MOVE community will emerge.

1. The Making of John Africa

The origin of MOVE and its foundational ideology can be traced to an unlikely relationship that developed between two men in the Powelton Village neighborhood of

²⁰⁵ Margot Harry, *Attention, MOVE! This Is America!* (Chicago: Banner Press, 1987), 36.

Philadelphia in the early 1970s: Vincent Leaphart and Donald Glassey. Leaphart, born 1931 in West Philadelphia, was one of 10 children raised Baptist by a southern immigrant handyman and his wife. Illiterate, Leaphart was a high school dropout who, following a brief stint in the army and failed and childless marriage in the 1960s, was himself working as a handyman and dog walker when he moved to Powelton around 1971.²⁰⁶ Leaphart's ideology borrowed in part from ideas regarding the "principles of natural law" and vegetarianism espoused by the Kingdom of Yahweh, a Phoenix-based apocalyptic sect of followed by his ex-wife.²⁰⁷

Glassey, the product of a white middle-class upbringing and a recent social work master's degree recipient from nearby University of Pennsylvania, developed a relationship with Leaphart. Leaphart's dictated ideas were captured and organized by Glassey in a 300-page "naturalistic" philosophy called *The Book of Guidelines, The Book*, or later, *The Teachings of John Africa*.²⁰⁸ An early indication of Leaphart's/John Africa's controversial ideology regarding pests and vermin occurred in winter 1973. The landlord of Leaphart's community housing-owned apartment at 3207 Pearl Street initiated eviction proceedings when Leaphart refused to fumigate, arguing that roaches—like people—were God's children.²⁰⁹

It was following this disagreement that Leaphart moved his "family" of 30+ dogs and cats to a crumbling mansion, purchased by Donald Glassey and located at 307–309 North Thirty-third Street in the Powelton Village area of West Philadelphia. There he founded the "American Christian Movement for Life" or "Christian Life Movement"—the name would later be shortened to "MOVE." According to Glassey, as early as 1972, Leaphart took the name "John Africa" to pay homage to "the continent where all life began" rather than as a sign of racial solidarity.²¹⁰ The name would later become eponymous with MOVE ideology itself, transcending the direct connection to Leaphart

²⁰⁶ Anderson and Hevenor, *Burning down the House*, 1–2.

²⁰⁷ Michael Boyette and Randi Boyette, *"Let It Burn!:" The Philadelphia Tragedy* (Chicago: Contemporary Books, 1989), 34.

²⁰⁸ Anderson and Hevenor, *Burning down the House*, 3.

²⁰⁹ *Ibid.*, 4.

²¹⁰ *Ibid.*.

and creating a mythic foundational persona.²¹¹ MOVE further obscured its own organizational beginnings by refusing to confirm that Leaphart and John Africa were one and the same.²¹² Through adoption of the “Africa” surname, MOVE members demonstrated commitment to the philosophical teachings, made a reciprocal gesture of group identification, and clearly separated themselves as a distinct and cohesive community. MOVE drew an assortment of mostly black adherents from a range of socioeconomic backgrounds. Early members included Leaphart’s sisters and their children, as well as Delbert Orr, a former Black Panther who had served four years as the captain of defense and chief of security for the Panther’s in Chicago and northern Illinois.²¹³

2. MOVE ideology

MOVE eschewed birth control, encouraged prolific childbearing among female members, and elevated children born within MOVE to a unique status. MOVE women were expected to deliver their children through natural childbirth accompanied by unconventional post-natal practices. Physicians neither monitored pregnancies nor attended births, and mothers adopted alternative delivery practices such as biting through and eating umbilical cords and licking babies clean of amniotic residue.²¹⁴ Upon birth, MOVE children, unlike MOVE adults, were viewed as pure humans, uncorrupted by the “addictions” of the “system lifestyle.”²¹⁵ Babies did not wear diapers and were allowed to freely defecate along with MOVE’s various pets.²¹⁶ They were fed a purely vegetarian diet consisting solely of raw fruits and vegetables and clothed sparingly. Neighbors reported seeing MOVE children eating out of garbage cans, some becoming so concerned they invited the children into their own homes to provide them with food.²¹⁷ MOVE

²¹¹ Ibid., 5.

²¹² Boyette and Boyette, “*Let It Burn!*,” 3.

²¹³ Ibid., 38.

²¹⁴ Anderson and Hevenor, *Burning down the House*, 9.

²¹⁵ Ibid.

²¹⁶ Robin Wagner-Pacifici, *Discourse and Destruction: The City of Philadelphia versus MOVE* (Chicago: University of Chicago Press, 1994), 14.

²¹⁷ Harry, *Attention, MOVE! This Is America!*, 12.

disputed any suggestions of abuse, claiming the children were sufficiently clothed, provided a nourishing diet of natural foods, and exhibited less sickness than other children in the neighborhood.²¹⁸

The lifestyle adopted by MOVE followers delineated them from their surrounding community and created touch points for both interpersonal and organizational hostility. MOVE members grew their hair out to the fullest length possible in the dreadlock style, refused to use soap to bathe, and all wore denim jeans, jackets, and men's heavy boots. Adherents were strict vegetarians and believed strongly in the medicinal qualities of garlic consumption. Community support tasks such as child care and grocery shopping, along with accompanying titles, such as "Minister of Information" and "Full Naturalist Minister" were doled out in communistic fashion.²¹⁹ Member erected a stage in front of the Powelton Villiage house and set up bullhorns from which to deliver frequent, amplified, obscenity-filled readings and lectures from *The Teachings of John Africa*. Neighbors who complained were chastised and singled out for denunciation.²²⁰

B. MOVE VERSUS PHILADELPHIA

MOVE's belligerent and confrontational posture towards the "system" extended to governmental entities as well, which MOVE naturally viewed as personifications of the corruptive influence surrounding their enlightened community. Already by 1973, encounters between MOVE members and Philadelphia Police had become a common occurrence. During a seven-month period from 1973–74, 40 separate MOVE members were arrested 150 times—albeit primarily for misdemeanor crimes such as loitering, obscenity, or unlawful demonstration—fined a combined \$15,000, and given multi-year prison sentences. MOVE members were encouraged by the organization to be disrespectful to the bench and confrontational in court.²²¹ However, it is noteworthy that during the early history of MOVE and in particular prior to the August 1978 raid, MOVE

²¹⁸ Ibid.

²¹⁹ Anderson and Hevenor, *Burning down the House*, 10.

²²⁰ Ibid.

²²¹ Ibid., 11.

was often characterized as a non-violent organization. Officer Cresci of the Philadelphia Police Department's Civil Affairs Unit later asserted that between 1973 and 76, members of MOVE, "other than being vocal," displayed not even potential violent tendencies.²²²

1. The "Problem Neighbor"

MOVE's communal residential practices under comparatively unhygienic conditions created the first and perhaps most enduring source of contention with city homeland security stakeholders. By May 1975, Philadelphia citizens living near MOVE's Powelton Village property had endured over three years of MOVE members keeping unvaccinated dogs, strewing garbage and attracting vermin and insects, operating an illegal car wash in front of their property, and verbally assaulting neighbors using their loudspeakers. Following repeated complaints by neighbors, Philadelphia health and code inspectors visited, but were not allowed access to, the MOVE property. MOVE eventually adopted a tactic of claiming members would take suicidal action if inspections occurred. John Africa's wife, Alberta Wicker Africa, once stated to reporters, "We will not let these inspectors come in and contaminate our environment. If they violate the sanctity of our home, we will cycle our children before we let them take the children away."²²³

2. Battle Lines are Drawn

The city did at this point make an attempt to compel MOVE to end its disruptive behavior, but it quickly acquiesced when MOVE resisted judicial influence. Beginning in September 1975, a Philadelphia solicitor's office suit charging Glassey with housing, health, zoning, fire, and safety code violations, moved through the courts for 11 months. This culminated in a July 1976 ruling by the Supreme Court of the Commonwealth of Pennsylvania upholding a lower court's order for an inspection of the property. MOVE members responded by initiating construction of an eight-foot tall stockade fence. Meanwhile, altercations between MOVE and homeland security stakeholders increased in

²²² Wagner-Pacifici, *Discourse and Destruction*, 29.

²²³ Anderson and Hevenor, *Burning down the House*, 15.

frequency and severity. On Sunday, March 28 1976, the relationship between MOVE and Philadelphia Police degraded following a disturbance call to the Thirty-third Street house. A melee ensued after MOVE members, some of whom had been released from prison that morning, threw bricks at responding officers. Six officers were injured and six MOVE members were arrested for charges including aggravated assault, resisting arrest, riot, and reckless endangerment. MOVE alleged that the three-week old son of two MOVE members was crushed to death while being carried by his mother when police trampled her under unclear circumstances during the response.

This proved to be a watershed event in the degradation of the city's relationship with MOVE. After initially burying the undocumented child, Life Africa, themselves, MOVE members returned the body to the house to display to two city councilmen and a local clergy member as evidence of police brutality.²²⁴ Because there was neither an autopsy conducted to determine the time or cause of death nor even a positive identification of the body, police denied the death occurred; others suggest the infant died earlier of natural causes and that MOVE exploited the death for additional publicity.²²⁵ On November 9, 1976, Rhonda Africa delivered a boy who died minutes after birth. MOVE would allege that the boy's death was due to Rhonda's having been beaten by police four days earlier when she was arrested while protesting in front of a court where other MOVE members were being sentenced. A previous April 1975 miscarriage by Alberta Africa was likewise reassessed resulting from police brutality.²²⁶ The combination of unattended births, rejection of prenatal care, and frequent arrests of pregnant MOVE members created an environment of risky pregnancies and childbirths under opaque circumstances. However, MOVE was convinced that official actions were responsible for any tragedy, leading to a calcification of anti-establishment ideology and seemingly manifested belief that the police was determined to kill MOVE children.

²²⁴ Ibid., 13.

²²⁵ Boyette and Boyette, "*Let It Burn!*," 64–65.

²²⁶ Harry, *Attention, MOVE! This Is America!*, 97.

3. Civic Disobedience Becomes Armed Resistance

By September 1976, Philadelphia Police were receiving reports that John Africa had abandoned social change through peaceful means and that members were undergoing training and stockpiling weapons and ammunition in anticipation of a showdown with police.²²⁷ On May 20, 1977, after MOVE members received mistaken reports that sheriff's deputies were coming to evict members from the Thirty-third Street "headquarters," approximately six MOVE members wearing military-style clothing and carrying a variety of small arms and blunt weapons maintained a visible presence in front of their barricaded house. After directing amplified harangues at upwards of 200 responding police and SWAT team members for nine hours, during which one MOVE member stated, "the only way they [the police] will come in our headquarters is over our dead bodies," the confrontation ended as police withdrew and MOVE members returned to the house.²²⁸ MOVE would later allege the action was defensive, not offensive in nature, and that the brandished weapons were inoperable and simply displayed as a "deterrent."²²⁹ Some days later, however, armed MOVE members would fan out into the neighborhood and take position on street corners. It is unknown if Leaphart directed this action to foment confrontation or simply gauge the police response to such elevated tactics. Police arrested one member and seized his weapon.²³⁰

4. Deferral and Defense

During a press conference on May 23, the Monday following MOVE's pledge of self-defense, Philadelphia Mayor Frank Rizzo stated that he would not tolerate any violence by MOVE, but that in the meantime, he could offer little assistance to MOVE's neighbors, stating, "we're going to sit and wait it out."²³¹ The mayor also stated he could only send in inspectors from the city's Licenses and Inspections Department (L&I) with police protection but added, "and I'm not sending in police for L&I violations." City

²²⁷ Anderson and Hevenor, *Burning down the House*, 14.

²²⁸ *Ibid.*, 16.

²²⁹ Boyette and Boyette, "*Let It Burn!*," 67.

²³⁰ *Ibid.*, 69.

²³¹ Anderson and Hevenor, *Burning down the House*, 18.

Managing Director Levinson added that the city would not shut off water to compound, noting MOVE, “would interpret that as an act of war,” and “the way they would respond to an act of war would be to kill their own babies.”²³²

Such comments expressed by city executives in the immediate aftermath of the first significant altercation between the city and MOVE reveal key underlying governmental motivations and perceptions. First, in suggesting he would not utilize police to support inspections and enforcement of what were by all indications glaring L&I building and health code violations—even given a state supreme court’s affirmation of the inspection order to do so—Mayor Rizzo reveals he does not view these departments as complementary agents of municipal influence. Though Mayor Rizzo perhaps suspected that police escorts of L&I inspectors could have resulted in an escalation of MOVE’s posture and violent rhetoric, his choice of words clearly indicate the mayor, himself the former Philadelphia Police Commissioner, did not view the deployment of officers in a support role to L&I as a judicious use of his law enforcement assets. Moreover, his statement seems to reflect a stance that police and L&I activities were separate and discreet municipal enforcement functions. By apparently not recognizing the police-supported enforcement of L&I infractions as a viable coercive tactic and inroad to compelling MOVE to cease its aggravating behavior, Rizzo and the city failed to capitalize on a series of clear, legally justifiable, and easily enforceable infractions. In doing so, the city both emboldened MOVE through tacit toleration of its clearly improper behavior and limited the city’s own future arsenal of legally supportable tactical options.

Additional self-imposed operational limitations were reflected in the comments made by Director Levinson. By rejecting the standard tactic of shutting off the Powelton property’s water due to a clear contractual violation (i.e., MOVE’s failure to settle its utility bill) based on a presumption that MOVE would interpret this as an “act of war” illuminates city executives’ enlightened understanding of the MOVE oppositional mindset as a besieged organization. However, his apparent belief that MOVE members

²³² Ibid., 19.

would indeed murder their own children based solely on a disruption of their water supply suggests both that the city interpreted MOVE statements literally and assumed that even incremental governmental efforts to counter MOVE's provocations would result in drastic and violent response. Though such caution and restraint on the part of city officials in the interest of MOVE children is laudable, it likely also indicates city officials lent perhaps excessive credence to MOVE threats, allowing their disproportionate and likely unfounded concern for child welfare to be exploited by MOVE.

Conversely, repeated skepticism regarding MOVE members' explicit threats towards city officials, politicians, and adjacent neighbors later indicated this concern was selectively rather than universally applied. Seven years later in summer 1984, Director Brooks would attend a meeting at the FBI Philadelphia office to discuss the possibility of federal enforcement of explicit, amplified threats made by MOVE against both city officials and the president. Federal officials interpreted such comments as falling within MOVE's 1st Amendment rights to free speech. With specific reference to MOVE's "threat" against the president, this was likely due to case law differences between the "objective" versus "subjective" interpretations of the relevant statute 18 U.S.C. 871(a)(1970), according to which most prosecutions have been burdened to prove that a reasonable person would need to conclude that the utterance, within the context it was issued, constituted a bona fide threat. It would seem that in contrast to city officials, federal agencies assessed MOVE's threats as not sufficiently serious, likely based on their awareness that MOVE had frequently issued similar such threats but never acted upon them.²³³

5. Threat Escalation

Despite city executives' apparent overestimation of the actual threat posed by MOVE, never had such action taken place in Philadelphia, nor nationally since the Black Panthers had stood on the steps of California government buildings in Sacramento

²³³ Wagner-Pacifi, *Discourse and Destruction*, 108.

carrying shotguns 10 years prior.²³⁴ A gauntlet had been thrown, as MOVE was now openly defying the sovereignty of both the Philadelphia police and the city.

6. The Siege of MOVE

Police responded by sandbagging windows of houses across from the MOVE property and setting up an access-controlled perimeter in the surrounding streets, greatly impacting the surrounding community. Groups both supporting and decrying MOVE emerged, and the compound became a symbolic epicenter for anti-establishment resistance. A group of concerned citizens, principally composed of landlords with real estate interests in the Powelton area, formed the Powelton Emergency Rights Committee (PERC) to petition the city to enforce health and housing code violations against MOVE. Others would defy the blockage to deliver food and other items to MOVE in symbolic support of the group.²³⁵

7. A Federal Informant

Following the 20 May event, weapons violations and a federal firearms charge were levied against MOVE members. A gun taken by deputies from one of the MOVE members who had assumed an armed position in the street near the Powelton residence was traced through a stolen driver's license to Donald Glassey. This made his concurrent purchase of two shotguns and 200 rounds of ammunition a federal offense, leading the BATF to arrest him on June 3.²³⁶ Following their investigation, police charged 11 MOVE members with Pennsylvania weapons code violations.²³⁷ Facing a \$25,000 bail and five-year federal sentence, Glassey cooperated with investigators in exchange for a reduced sentence and witness protection and became a police informant on MOVE.

Glassey reported John Africa was directing MOVE's actions remotely from Chester, Pennsylvania and had become unstable. He further reported MOVE had hidden a large arsenal at an unknown location. Federal agents encouraged Glassey to assist them in

²³⁴ Harry, *Attention, MOVE! This Is America!*, 98.

²³⁵ Ibid.

²³⁶ Boyette and Boyette, "*Let It Burn!*," 69.

²³⁷ Anderson and Hevenor, *Burning down the House*, 20.

building a conspiracy case, leading him to convince a fellow MOVE member named Witt that Leaphart's turn towards violence was mistaken and to persuade Witt to assist with the recovery and disposal of the arsenal.²³⁸ On July 21, 1977, agents conducted surveillance on Glassey and Witt as they collected weapons and bomb making materials at numerous MOVE locations, eventually arresting them and seizing eight high-powered rifles, two shotguns, a handgun, and 100 rounds of ammunition.²³⁹ Agents also recovered a homemade time bomb, two timer mechanisms with batteries, radio controlled electronics, sulfuric and nitric acids, toluene, ammonium hydroxide, chemistry equipment, 15 pounds of gunpowder, and sufficient parts to construct numerous destructive devices. Military manuals, a copy of *The Silencers, Snipers, and Assassins Handbook*, and chemistry guides were also recovered, and Witt was arrested.²⁴⁰ Subsequent to this seizure, federal arrest warrants were levied against Vincent Leaphart/John Africa and his close adherent Alphonso Robbins aka "Mo" Africa, both of whom absconded. Leaphart would continue to direct MOVE from hiding.²⁴¹ Through the next week, Glassey would attempt to draw another co-conspirator named Greg into a sting sale of C-4 explosives. Though he eluded ATF efforts, Greg alleged to Glassey that MOVE's ulterior motive was a government extortion plot utilizing the explosives as a threat.²⁴² Absconding MOVE member Jeanne Africa also alleged that in June 1977, Leaphart and Beowolf Africa were in possession of what appeared to be two pipe bombs, which she disposed of on their behalf.²⁴³ In 1984, Witt would be found dead floating in the Schuylkill River. Though officially ruled a suicide, Leaphart's sister Louise alleged MOVE was responsible.²⁴⁴

Although this enforcement effort would seem to indicate an amplification of the threat stream emanating from MOVE, a few contextual observations are worth noting.

²³⁸ Boyette and Boyette, "Let It Burn!," 70–71.

²³⁹ Anderson and Hevenor, *Burning down the House*, 22–23.

²⁴⁰ Boyette and Boyette, "Let It Burn!," 71.

²⁴¹ Anderson and Hevenor, *Burning down the House*, 23.

²⁴² Boyette and Boyette, "Let It Burn!," 74.

²⁴³ *Ibid.*, 78.

²⁴⁴ *Ibid.*, 126.

Assuming the MOVE members in actual possession of the seized weapons were not federally prohibited from possessing a firearm and had fulfilled all state and local registration and regulatory mandates, none of the firearms seized were themselves illegal or controlled.²⁴⁵ Aside from the single assembled device, the remaining manuals, chemicals, and materials—though unsettling and highly suspicious given the collective set of circumstances—were likewise legal in unassembled form. More importantly, the existence and location of all seized items were apparently known to and accessible by Mr. Glassey, who himself had obtained the originally seized firearms through fraudulent means. It was therefore plausible that despite his assertions that MOVE and, more specifically, Leaphart had directed him to assemble this weapons cache on the group's behalf, Glassey himself may have assembled and constructed this arsenal at his own initiative or as part of a limited rather than organizationally contrived conspiratorial effort. Given his motivation to satisfy the enforcement goals of federal law enforcement and fulfill his plea bargain obligations, Glassey may have felt compelled during the summer of 1977 to vaunt MOVE's alleged arsenal and inflate perceptions regarding the group's violent capabilities. Though a criminal conspiracy is presumed, the fact that other MOVE members were not themselves found to possess exclusive access to the seized weapons or destructive devices at least makes feasible the possibility that Glassey, rather than the organization, was solely responsible for assembling and maintaining this cache. Four years later, one other MOVE member would admit involvement, but Leaphart's involvement role in ordering the assembly of a weapons cache would never be proven.

Already at this point in Philadelphia's response to MOVE, the city was beginning to incur costs incommensurate with both the size and threat posed by the community. The *Philadelphia Daily News* estimated that police surveillance of the MOVE compound following the May 20 altercation cost the city \$1.25 million, most of it for police overtime pay.²⁴⁶ In addition, the *Philadelphia Inquirer* conducted a study that determined between 1975 and 78, there had been over 250 trials involving MOVE members, many

²⁴⁵ Note that certain parties, including felons, are prohibited from receiving or possessing firearms per 27 Code of Federal Regulations Part 178. The right to bear arms is otherwise protected by the 2nd Amendment of the U.S. Constitution.

²⁴⁶ Anderson and Hevenor, *Burning down the House*, 20.

protracted due to MOVE's belligerent tactics, which had delayed the timely resolution of 2,000 unrelated cases, costing taxpayers at least \$250,000.²⁴⁷

8. A Broken Truce

The city responded on March 1, 1978 by obtaining permission to blockade the MOVE compound at 309 North Thirty-Third Street based on unpaid utility bills and blockage of access to L&I inspectors. Construction of a four-block blockade began following the Pennsylvania Supreme Court's decision to uphold the order, which finally included shutting off gas and water to the residence. MOVE, having stockpiled provisions, dug in and a stalemate ensued for the next 52 days. Finally, on May 3, the city reached a 10-point compromise: MOVE would turn over any remaining weapons and police would be allowed to search the compound. It would also allow police to arrest any members with outstanding warrants.²⁴⁸ In return, 18 incarcerated members of MOVE would be released on their own recognizance, and MOVE would have 90 days to vacate the property by August 1, 1978, at which point all outstanding charges would be dropped from the released members.²⁴⁹ The agreement was initially successful: police seized numerous weapons from the house, all of them inoperable, and fingerprinted and photographed all those residing at the house.²⁵⁰

Unfortunately, this first truly conciliatory agreement between the city and MOVE would not last. Attempts to find an alternative, preferably rural domicile for MOVE were unsuccessful; MOVE rejected an alternative property in north Philadelphia as unsuitable. When members failed to appear in court following the 90-day deadline, arrest warrants for 21 members were signed stipulating the police would have 10 days to secure the arrests.²⁵¹ MOVE ignored the order, contesting both municipal and judicial authority, and continued its provocative rhetoric alleging officially sanctioned racism, harassment, and prejudice. MOVE's non-compliance evolved into a confrontation on 8 August 1978, as

²⁴⁷ Ibid., 23.

²⁴⁸ Boyette and Boyette, "*Let It Burn!*," 84.

²⁴⁹ Anderson and Hevenor, *Burning down the House*, 24.

²⁵⁰ Boyette and Boyette, "*Let It Burn!*," 85.

²⁵¹ Anderson and Hevenor, *Burning down the House*, 25.

officers congregated at the compound to enforce warrants in an operation that had been planned from mid-July.²⁵²

9. Assault on Powelton Village

Beginning at approximately 4:30 a.m., a force of policemen and firefighters, which would eventually number 300, assembled near the compound. Because police presumed all weapons had been removed when the truce was finalized and as police had not permitted anyone to enter the property since, officers believed there would be no armed resistance.²⁵³ MOVE activated its loudspeakers, and member Chuckie Africa stated, “You’re trying to kill breastfeeding mothers and breastfeeding children. We’re not backing down. If you want us out, you’ll have to bring us out dead,” and, “tell the world [Mayor] Rizzo killed black babies for a health violation.”²⁵⁴ At 6:04 a.m., police gave MOVE two minutes to vacate their domicile. MOVE retreated to the basement, ignoring repeated additional deadlines. A gun was briefly spotted from a basement window. Firemen then began spraying water into the basement, and because the windows were only three feet from the basement floor, it was assumed no occupants would be in danger of drowning.²⁵⁵ At approximately 8:15 a.m., shots were fired and two policemen fell to the ground. One of those shot, Officer James Ramp, would later succumb to his wounds. After gunfire subsided, firemen continued to blast water into the house for another half hour, filling the basement. Finally, at approximately 8:35 a.m., MOVE children emerged, followed by adults carrying infants.²⁵⁶

10. Trial and Convictions

All told, five policemen and four firemen sustained gunshot wounds, including the fatality, and six additional officers and firefighters had received other injuries. One MOVE member was shot in the arm. Eleven MOVE members were arrested and charged

²⁵² Ibid., 28.

²⁵³ Boyette and Boyette, “*Let It Burn!*,” 91.

²⁵⁴ Anderson and Hevenor, *Burning down the House*, 30.

²⁵⁵ Boyette and Boyette, “*Let It Burn!*,” 95.

²⁵⁶ Anderson and Hevenor, *Burning down the House*, 35.

with murder. Police found two .45 caliber pistols, two 12-gauge shotguns, a Mauser, and six carbines in the in the house.²⁵⁷ None of the defendants' fingerprints were found on any of the weapons, nor were any defendants charged with illegal possession of weapons.²⁵⁸ Though police originally claimed that MOVE had a cache of automatic weapons in the basement, no corroborating evidence could be presented, nor could police prove that any MOVE members displayed weapons while surrendering.²⁵⁹ After searching the property and with previously obtained judicial authorization in hand, police bulldozed the feces polluted, vermin-infested compound the same day.²⁶⁰ However, the District Attorney's Office had known nothing of the planned demolition and was outraged its evidence had just been destroyed.²⁶¹ Papers lauded the restraint shown by police. Nine MOVE members abandoned their right to a jury trial and acted as their own counsel in a judge trial. The raucous trial, during which multiple MOVE members were repeatedly ejected and on one occasion instigated a courtroom brawl, was shifted to a defense by backup counsel. On May 8, 1980, based primarily on circumstantial evidence and proof that the .232-caliber Ruger Mini-14 used to kill Officer Ramp had been linked to a MOVE member and found at the scene, all 11 were eventually found guilty as charged and issued sentences ranging from 30 to 100 years in prison.²⁶² MOVE claimed that Ramp was a victim of "friendly fire," that the murder weapon was planted to frame the group, and that the house was demolished to destroy the exonerating evidence.²⁶³ A concurrent police brutality assault trial against three policemen accused of beating Delbert Africa during the raid was summarily dismissed by the judge, adding to MOVE's outrage.²⁶⁴

²⁵⁷ Boyette and Boyette, "*Let It Burn!*," 99.

²⁵⁸ Harry, *Attention, MOVE! This Is America!*, 108.

²⁵⁹ *Ibid.*, 107.

²⁶⁰ Anderson and Hevenor, *Burning down the House*, 38.

²⁶¹ Boyette and Boyette, "*Let It Burn!*," 100.

²⁶² Anderson and Hevenor, *Burning down the House*, 45, 47; Boyette and Boyette, "*Let It Burn!*," 109.

²⁶³ Boyette and Boyette, "*Let It Burn!*," 102.

²⁶⁴ *Ibid.*, 109.

C. POST-POWELTON

Numerous aspects of the 8 August police raid shed light on the diverging interpretative frameworks held by each party, likely exacerbated by the lack of an effective communication mechanism between the city and MOVE. Though MOVE clearly defied the stipulations of the truce ending the police blockade by not relocating to a new property, this was the only portion of the truce that was violated. MOVE had allowed police to search the Powelton property to confirm that MOVE neither maintained a weapons cache nor possessed other contraband. Though subsequent to this search MOVE could have (and apparently did) obtain weapons during the 90-day grace period, there was no discernible suspicion the group was seeking violent altercation. By not providing subsidized relocation assistance, the city was also de facto requiring destitute MOVE members, themselves shunned by the rest of the community and unlikely to find willing landlords, to opt for homelessness rather than remain entrenched. In addition, the massive show of force in a cramped inner-city venue could itself have both terrified ensconced MOVE members frightened for their children's safety and caused tactically avoidable crossfire hazards. There is likewise no indication police attempted to arrest sought MOVE members individually away from the compound, which may have prevented the barricaded subject scenario. It seems more likely that police were simultaneously outraged at MOVE's defiance and default on the city's generously negotiated terms and convinced that actual violent tendencies accompanied MOVE's rhetoric and showmanship.

1. MOVE Moves

The mystery of Vincent Leaphart/John Africa's whereabouts was resolved on May 13, 1981. Unbeknownst to Philadelphia authorities, in spring 1977, MOVE members including Leaphart had acquired seven low-value properties in Rochester, New York and continued to live according to MOVE's ascetic ideology under assumed names. Evidence suggests Leaphart had directed MOVE's core in Philadelphia from here, including his imposition of a plan for armed resistance if police attempted to storm the

Powelton residence by force.²⁶⁵ ATF agents eventually tracked Leaphart to this location, arresting him on bomb making and eight other members on various separate charges. Again, no weapons were found at any of the MOVE properties.²⁶⁶ During Leaphart's trial, convicted MOVE member Samuel Sanders testified that he had constructed bombs found during the 1978 ATF sting at Leaphart's direction and planted bomb threat at a Philadelphia motel in 1977.²⁶⁷ Glassey likewise testified that though originally non-violent, Leaphart had ordered the group to arm itself in September 1976 in anticipation of a confrontation with police. In October that year, Glassey and other MOVE members allegedly placed timing devices and delivered bomb threats in hotels nationwide—reportedly as well as in London—in furtherance of an extortion attempted conceived by Leaphart and grounded on the appearance that MOVE controlled a vast underground structure.²⁶⁸ He further stated that Leaphart assembled a meeting shortly before the 1977 “guns on the porch day” to announce a police confrontation was imminent. Refuting evidence was presented that suggested the bombs were entirely an ATF entrapment and that the bomb making conspiracy was limited to Glassey, Sanders, and two other MOVE members. On July 22, 1981, after five and a half days of deliberations, the jury found Leaphart innocent on all counts.²⁶⁹

Following his acquittal, Leaphart again went underground. With the Powelton Village property demolished and Rochester properties effectively disabled, the remaining MOVE members sought a new domicile. The new MOVE headquarters was 6221 Osage Avenue, a three-story row house located in a middle-class West Philadelphia neighborhood occupied by Leaphart's sister Louise and her son Frank Jr. Since 1980–81, children of several of the members convicted of the 1978 standoff had been harbored at the residence.²⁷⁰ It now became the de facto home for a fluctuating number of MOVE

²⁶⁵ Ibid., 81.

²⁶⁶ Anderson and Hevenor, *Burning down the House*, 50.

²⁶⁷ Ibid., 51.

²⁶⁸ Ibid.; Wagner-Pacifi, *Discourse and Destruction*, 31.

²⁶⁹ Anderson and Hevenor, *Burning down the House*, 53–54; Boyette and Boyette, “*Let It Burn!*,” 113.

²⁷⁰ Anderson and Hevenor, *Burning down the House*, 55–56.

adherents and children of around a dozen. Just as in Powelton Village, MOVE's disruptive lifestyle habits began to impact adjacent neighbors, and beginning in fall 1983, a series of altercations between MOVE members and their neighbors led to violent assaults. In the fall of 1983, MOVE began its last campaign of defiance, demanding 1) the unconditional release of all imprisoned MOVE members, and 2) a cessation of all harassment of MOVE by the city.²⁷¹ In December 1983, MOVE again installed a loudspeaker system and reinstituted its obscenity-filled tirades calling for the release of all incarcerated MOVE members. During the summer and fall of 1984, amplified harangues were conducted for six to eight hours daily.²⁷² After enduring harassment and her being victim to a series of beatings by Frank, directed from afar by Leaphart, Louise James abandoned 6221 Osage to the group in October 1983.²⁷³

2. Mayor Goode's Appeasement Campaign

On April 13, 1984, a city Water Department employee was dispatched to 6221 Osage to turn off the water for nonpayment of utilities. A policeman on scene advised that this was a MOVE house, but refused to provide back up to allow the employee to safely approach the residence. Despite the lessons learned at the Powelton property, this would be the last attempt to disconnect water to the 6221 Osage residence by the city.²⁷⁴ After a MOVE member was spotted on the roof with a shotgun on May 3, police were dispatched and a stalemate ensued for an hour and a half, ending when the gunman retreated to the house. Note that this display occurred while another MOVE member was being interviewed in front of the house by a TV news crew, suggesting the display was designed to garner press attention to the movement.²⁷⁵ At a press conference, newly elected Mayor Goode stated, "We do not want to do anything that will cause an

²⁷¹ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 19.

²⁷² Wagner-Pacifci, *Discourse and Destruction*, 33.

²⁷³ Anderson and Hevenor, *Burning down the House*, 58–59.

²⁷⁴ *Ibid.*, 59.

²⁷⁵ Harry, *Attention, MOVE! This Is America!*, 31.

unnecessary confrontation...I prefer to have dirt and some smell than to have bloodshed.”²⁷⁶

Beginning in mid-May, MOVE initiated weekend-long, 24-hour loudspeaker harangues, disturbing neighbors and nearly provoking a melee. During a May 28 meeting with Mayor Goode, outraged Osage Avenue residents demanded action by the city, asking Goode what could be done about MOVE. Mayor Goode responded, “[his] only concern is the MOVE kids,” and that he would, during the coming days, research the legal basis for city action, noting he did not want to, “in an unprepared manner, end up with a confrontation on that street that would cause the loss of lives, that would have innocent people, perhaps, injured or lose their lives and property damaged unnecessarily.”²⁷⁷

During a May 30, 1984 meeting between city officials, Assistant U.S. Attorney (AUSA) Edward S.G. Dennis, Jr., and FBI and U.S. Secret Service officials at his office, Mayor Goode proposed that MOVE was perhaps a federal problem. The AUSA found no grounds for a federal response, noting that the threats did not constitute federal violations and that though there existed a federal warrant for John Africa’s arrest, his presence at the Osage residence was unconfirmed. AUSA Dennis went a step further, promising Goode that his office would be monitoring any confrontation between the city and MOVE to ensure the group’s civil rights were not violated.²⁷⁸

The Goode administration then approached Philadelphia District Attorney Rendell for a legal opinion on intervention. He responded on June 22 that an arrest warrant already existed for Frank James Africa and urged Mayor Goode that prompt action, coordinated across the city departments, would be preferable to a delayed response. Included in the memo was the assessment that, “unfortunately the most sustainable charges are misdemeanors,” and “if convicted...most MOVE members would not be given substantial jail sentences.”²⁷⁹ In grand jury testimony three years later, Goode

²⁷⁶ Anderson and Hevenor, *Burning down the House*, 59.

²⁷⁷ *Ibid.*, 61.

²⁷⁸ Boyette and Boyette, “*Let It Burn!*,” 129.

²⁷⁹ Harry, *Attention, MOVE! This Is America!*, 30–31.

would concede that the reason the city did not then have signed warrants to effect arrests was because Goode himself had made no efforts to seek them.²⁸⁰ Meanwhile, Philadelphia Police Department (PD) had already warned state parole agents against attempting to serve the warrant at 6221 Osage; agents were instructed to only attempt arrest “on the street” and the warrant was never executed.²⁸¹ A Philadelphia PD captain went so far as to say that if parole attempted an arrest, the PD would not provide assistance.²⁸²

Interestingly, these actions and statements by both the District Attorney’s (DA) Office and the mayor indicated a generalized reluctance to pursue legal action in summer 1984. DA Rendell would later speak of a “subjunctive mood...with regards to the warrant,” noting the “memo did not ripen into arrest warrants” at that time.²⁸³ Mayor Goode indicated the decision at hand was not whether legal basis existed, but whether confrontation with MOVE, “over 1 or 2 warrants and...what they [the district attorney’s office] regard[ed] as misdemeanors.”²⁸⁴ He noted this might simply provoke MOVE and fail to solve the neighborhood’s problems.²⁸⁵ This could be seen as an official desire for a “silver bullet” solution to MOVE, combined with a strong reluctance to confront the group with anything less than a legal panacea; combined, this constituted an unlikely pipe dream that created self-imposed tactical constraints. This reluctance was mirrored in statements made by Rendell regarding a May 7, 1985 meeting at which the decision was made to prepare warrants for the MOVE “Mother’s Day” operation; Rendell would later recall, “There was almost a dread in that room so thick you could have cut it with a knife.”²⁸⁶

²⁸⁰ Boyette and Boyette, “*Let It Burn!*,” 131.

²⁸¹ Anderson and Hevenor, *Burning down the House*, 69.

²⁸² Harry, *Attention, MOVE! This Is America!*, 31.

²⁸³ Wagner-Pacifci, *Discourse and Destruction*, 110.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid., 113.

As the summer bore on, the city's reluctance to take action against MOVE calcified. During a July 4 meeting with impacted constituents, Mayor Goode advised the city would provide alternative recreation facilities and psychological counseling to neighborhood children who were forced to hear MOVE harangues and were intimidated by the property. Osage Avenue residents were incredulous.²⁸⁷ This once-a-week counseling, initiated the next month, was the only official assistance provided to the impacted neighbors until the city finally raided the property.²⁸⁸ Police officials advised utility workers to avoid four separate MOVE domiciles unless there was an emergency, and city L&I workers were cautioned from attempting inspections at the 6221 Osage property without executive management approval.²⁸⁹ In an apparent repeat of the 1978 actions taken by the Rizzo administration, no city department wanted to take unilateral action against MOVE for fear of altercation or reprisal, while the administration itself failed to orchestrate unified efforts through wholly available means. As a homeland security challenge, MOVE had become a localized problem, encapsulated within a closed compound, which officials preferred to monitor, excuse, and try best to ignore rather than seek a new trajectory to the city's relationship with this group.

Anticipating further antagonistic action in symbolic support of their incarcerated brethren, Philadelphia officials prepared for the six-year anniversary of the 1978 raid. On August 6, 1984, over 300 police and firefighters gathered near the 6221 Osage property to prepare for any retaliatory action by MOVE. Anticipating potential violence following the sighting of an armed member on the roof, Philadelphia police had already conceived a plan to breach the rooftop using fire hoses and entry explosives and insert tear gas into the residence as a contingency, but MOVE restricted its activities to continued verbal tirades.²⁹⁰ The next morning, confronted by the frightened next-door neighbor who had

²⁸⁷ Anderson and Hevenor, *Burning down the House*, 69.

²⁸⁸ Boyette and Boyette, "*Let It Burn!*," 142.

²⁸⁹ Anderson and Hevenor, *Burning down the House*, 72.

²⁹⁰ *Ibid.*, 73, 75.

been threatened by MOVE the previous evening, Philadelphia Managing Director Brooks stated in reference to the MOVE situation, “only an act of God could change this.”²⁹¹

3. The Osage Avenue Fortress

Beginning in October 1984, police officially confirmed reports that MOVE was fortifying the 6221 Osage property with a wooden emplacement on its roof. MOVE members openly brought tree trunks, pipes, and steel sheets into the residence throughout the fall and winter. Though Managing Director Brooks reportedly did not believe MOVE’s fortifications constituted, “a criminal act for which you can attack,” Police Commissioner Sambor viewed a failure to act as dangerous, noting that he had arrest warrants for two confirmed residents of the property. On April 29, 1985, threats to kill the mayor emanated from MOVE’s loudspeakers, and neighbors reported seeing armed men on the rooftop position. According to one press article, there were 12 MOVE adults and children living at the property at this time, along with 15–30 dogs and cats.²⁹²

On April 30, Osage Avenue neighbors hosted their first and only news conference, appealing to Pennsylvania Governor Thornburgh to intercede and offer the protection the city was apparently unable or unwilling to provide.²⁹³ The challenge pitted opposing parties against one another, as Thornburgh, a popular Republican, was being invited into a Democratic mayor’s backyard. MOVE responded with amplified threats against Goode, the police, and the neighbors and their children, including claims that they had wired adjoining properties with explosives that MOVE would detonate if attacked.²⁹⁴ As complaints from residents grew, accompanied by political liabilities, official frustration with MOVE intensified. City Press Secretary Karen Warrington reported the city was unable to respond, “unless the MOVE persons break a law.”²⁹⁵ Mayor Goode contended he could determine no

²⁹¹ Ibid., 77.

²⁹² Ibid., 79–80.

²⁹³ Boyette and Boyette, “*Let It Burn!*,” 145–146.

²⁹⁴ Ibid., 146.

²⁹⁵ Anderson and Hevenor, *Burning down the House*, 80.

violations on which we can make arrests...I don't have anything to hope for at this point...I've said that I cannot, in order to protect the rights of a group of people, violate the rights of a single person to do that. And my big concern is that I don't have a legal basis at this point to remove the problem from the neighborhood.²⁹⁶

When asked if he would act against MOVE if able, Goode replied, "the answer is yes. Do I wish I had a way? The answer is yes. Do I at this point? The answer is no."²⁹⁷ In a subsequent radio interview, Goode simply stated, "there is no legal basis for arresting MOVE members."²⁹⁸

4. A Decision to Act

By May 2, 1985, Goode had concluded that violent conflict between MOVE and its neighbors was likely, and he instructed District Attorney Rendell to determine the necessary legal justifications for official action against MOVE. Editorials lambasted the mayoral inaction and called for official intervention.²⁹⁹ During the previous days, MOVE had completed its fortified rooftop bunker, pushing it forward to give the group an unrestricted line of fire over the entire street.³⁰⁰ On May 8, Philadelphia Councilwoman Joan Specter railed against MOVE's \$1,500+ in unpaid utility bills stating, "It is outrageous that this city is being held hostage by MOVE, but it is even more outrageous that city residents are unwittingly subsidizing those terrorists."³⁰¹ The label was not entirely exaggerated, as in 1982, among other offenses, MOVE member Carlos Africa was convicted of making terroristic threats.³⁰² Again, Mayor Goode seemed unable to identify an enforcement inroad, stating,

The issue is whether or not the people who live in that house can continue to remain there...Yes, we can turn the water off. Yes, we can probably

²⁹⁶ Ibid., 81, 83.

²⁹⁷ Ibid., 83.

²⁹⁸ Ibid.

²⁹⁹ Ibid., 83-84.

³⁰⁰ Boyette and Boyette, "*Let It Burn!*," 149.

³⁰¹ Anderson and Hevenor, *Burning down the House*, 87.

³⁰² Wagner-Pacifci, *Discourse and Destruction*, 36.

turn off electricity, but that's not going to solve the problem the neighbors are faced with out there.³⁰³

He added publicly on May 10, "one ought [not] to engage in violent confrontation over a code violation."³⁰⁴

Though police attention was not being dedicated to support of L&I inspectors, warrant services, or—apparently—investigations into threats of violence and assault and battery complaints, significant efforts to monitor MOVE were undertaken. For the two years prior to the May 13 raid, the Civil Affairs Unit and Major Investigations Division, the Philadelphia Police Department's intelligence organ, kept the 6221 Osage Avenue property under continual surveillance. During later MOVE Commission hearings, the police would report that they had kept record of the number of MOVE meetings held dating back to 1973, protocols of the group's demonstrations, and assessments of MOVE's capabilities. Officers reported that through assistance from MOVE's neighbors, they were aware of MOVE's daily movements at Osage Ave.³⁰⁵ However, the MOVE Commission would also determine that these intelligence gathering efforts were uncoordinated and insufficient, and that, "the police did nothing to establish the means for the systematic collection, analysis and dissemination of intelligence information regarding MOVE and its members."³⁰⁶ Though the city's inability to deal with MOVE was therefore obviously not due to a lack of willingness to dedicate resources to the problem, it likewise failed to fully exploit and share the situational awareness information it did possess for tactical and contingency planning efforts.

At a May 3 meeting of city executives, current options were discussed. Speculative police surveillance was presented that indicated explosives stolen from Chester, Pennsylvania might have been brought to the Osage Ave. property and that MOVE members might have placed these in tunnels dug under the residence—tunnels

³⁰³ Anderson and Hevenor, *Burning down the House*, 88.

³⁰⁴ Wagner-Pacifi, *Discourse and Destruction*, 36.

³⁰⁵ Harry, *Attention, MOVE! This Is America!*, 26.

³⁰⁶ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 31.

that planners believed MOVE members might also use to escape the property.³⁰⁷ Both Rendell and Goode later noted that the Chester County reports and associated speculation dominated the talks.³⁰⁸ Such conspiratorial allegations were not unprecedented and had in fact previously been circulated by MOVE itself to inflate the group's image and bolster its alleged capabilities. For instance, during a January 25, 1983 meeting with ATF officials to demand federal attention to the plight of its incarcerated compatriots, MOVE members alleged the existence of a MOVE underground offshoot called "M-1." MOVE claimed that although the mainline community was non-violent, M-1 was not under MOVE organizational control and could be expected to "take actions" if MOVE was threatened or release demands were not met.³⁰⁹ On May 5, the District Attorney's office interviewed 19 Osage Avenue neighbors in support of search and arrest warrants. Though there was sworn testimony that MOVE had stockpiled weapons, no evidence of explosives was presented except for allegations that MOVE boasted of possession and intention to use them.³¹⁰ Finally, on May 7, Mayor Goode held a meeting and authorized Commissioner Sambor to plan and execute an enforcement operation.

On May 11, Judge Lynne M. Abraham signed the arrest warrants for four MOVE members known to reside at the 6221 Osage Ave. residence: Frank James Africa, Conrad Hampton Africa, Ramona Johnson Africa, and Theresa Brooks Africa. The four were charged with seven crimes, four of which were felonies, including criminal conspiracy, riot, improper influence in official matters, and possession of explosives. The judge also prepared a separate warrant authorizing police to search for the suspected cache of illegal weapons and explosives.³¹¹ Together, these documents provided the legal basis for the operation at the MOVE Osage Ave. compound. Previously, on May 9, Commissioner Sambor had approved police plans to obtain additional firepower from a local gun shop,

³⁰⁷ Wagner-Pacifi, *Discourse and Destruction*, 35; Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 31.

³⁰⁸ Anderson and Hevenor, *Burning down the House*, 84.

³⁰⁹ Wagner-Pacifi, *Discourse and Destruction*, 39.

³¹⁰ Anderson and Hevenor, *Burning down the House*, 84.

³¹¹ Harry, *Attention, MOVE! This Is America!*, 36.

including three Browning Automatic Rifles, a M-60 machine gun, and a 20mm antitank gun.³¹²

5. MOVE Children Fall Through the Cracks

Through the continual police surveillance, authorities knew that MOVE took the children daily to nearby Cobbs Creek Park to play and exercise, leaving and returning at the same time. Mayor Goode later claimed that he instructed police to remove MOVE children from the property as soon as possible, though Commissioner Sambor recalled that he received no orders to recover minors until May 10 when he received legal authority to do so.³¹³ Due to problems with the dispatch of this order, on May 11, the civil affairs officer assigned to oversee the Osage property allowed at least two MOVE children past a police barricade, from which point on MOVE detected the pending confrontation and confined the children to the house.³¹⁴ Philadelphia's human services commissioner, Irene Pernsley, would testify before the commission that she was not advised of the issue with the MOVE children until May 9, when Commissioner Sambor called to direct her agency to place the MOVE children in protective custody until after the operation. Pernsley noted, however, that her agency had no authority to secure the children, asking, "On what basis it was being proposed that the children be picked up, inasmuch as we only operate on the basis of reports and allegations of neglect and abuse of children."³¹⁵ Unbelievably, as she would later report to the commission, during her entire tenure, Pernsley had received not one single report alleging abuse or neglect of the MOVE children at 6221 Osage. On May 9, the city solicitor's office instructed the police to take the children into protective custody at the earliest opportunity. However, the solicitor's office did not attempt to secure the enabling legal authority until the morning of 13 May, at which time it was too late to do so.³¹⁶

³¹² Boyette and Boyette, "*Let It Burn!*," 153.

³¹³ Anderson and Hevenor, *Burning Down the House: MOVE and the Tragedy of Philadelphia*, 85–86.

³¹⁴ Boyette and Boyette, "*Let It Burn!*," 158; Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 36.

³¹⁵ Harry, *Attention, MOVE! This Is America!*, 37.

³¹⁶ *Ibid.*

Admittedly, there were indications that members of MOVE, in fulfilling the group's extreme anti-establishment doctrinal beliefs, were perhaps employing child rearing techniques that were detrimental to early child development, if not outright neglectful. The story of Oyewolffe Ward, aka "Birdie" Africa, personifies this phenomenon. In January 1979, Birdie's estranged father, Andino Ward, sought to regain custody from the boy's mother Rhonda, herself a stalwart MOVE adherent. Rhonda had relocated with Birdie to a separate domicile referred to as "The Seed of Wisdom" in Richmond, Virginia, where two MOVE women cared for over a dozen children. Neighbors claimed the children bore distended bellies, slept on pallets, and were often seen sucking the yolks out of raw eggs.³¹⁷ Richmond welfare officials obtained a court order to view the children's birth certificates and compel a doctor's examination, which led the women to barricade the house for the next nine months. The women were eventually arrested and the children briefly moved to foster homes before the women returned them to Philadelphia. A Virginia judge would later give custody of the children to the state, though they were never returned.³¹⁸ Rhonda, extradited to Philadelphia from Richmond in August 1978 for charges related to the June 1977 public display of weapons event, though facing incarceration, refused to reveal the location of their son.³¹⁹ At seven, Birdie was illiterate and could not even read a watch; the only word he could spell: MOVE.³²⁰ Andino abandoned his attempts at gaining legal custody after MOVE members stated they would "cycle" Birdie before relinquishing him to the courts: the group claimed they would never give up a MOVE child to "the System."³²¹

D. THE FLAWED OPERATIONAL FRAMEWORK

Philadelphia officials exhibited numerous indicators that their collective operational frameworks regarding MOVE were unnecessarily restrictive and strategically myopic. In particular, decision making regarding child removal options and actions,

³¹⁷ Anderson and Hevenor, *Burning down the House*, 42.

³¹⁸ Boyette and Boyette, "Let It Burn!," 114–115.

³¹⁹ Anderson and Hevenor, *Burning down the House*, 39.

³²⁰ *Ibid.*, 28, 39.

³²¹ *Ibid.*, 39.

estimations regarding threats emanating from MOVE, tactical options available to law enforcement, and the severity ascribed to MOVE's unsubstantiated rhetoric indicate flaws in officials' stance toward the community.

1. Child Custody Confusion

Though such visibly unsettling childcare practices, apparent nurturing deficiencies, and tacit threats by MOVE members were undoubtedly unconventional and austere, these practices had not, during the history of MOVE, been found to be abusive or illegal by governmental agencies. Official concern for these children's wellbeing was understandable and justified given their environs within the various MOVE compounds, frequent incarceration of their parents, and potential uncertainties regarding incidence of unattended births or legal custody of the various minors.

Curiously, although a concern for MOVE children was one of the issues cited as having prompted official intervention into the community, it does not appear that Philadelphia officials were diligent in obtaining the legal basis for child removal and/or protective actions, up to and including the period immediately preceding dynamic entry operation into the Osage Avenue property. This negligence is contrasted by police deliberations undertaken by former commissioner O'Neil prior to the 1978 Powelton assault, who testified that he based tactical plans "on a premise that the children were hostages."³²²

The fact that the city's human services director was not engaged by city executives to determine the status of child protective efforts until days before a major police intervention reveal this well-meaning but pragmatically and legally tenuous official interest, particularly given the mayor's aforementioned claim on 28 May that MOVE children were his "only concern." Mayor Goode's recollection that he instructed Commissioner Sambor to secure the minor occupants of the Osage residence on 7 May likewise reflect either misunderstanding of existing legal process or complete failure to consider a holistic solution to the perceived MOVE threat. The MOVE Commission would later also fault city officials with not taking action against MOVE's blatant

³²² Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 17.

disregard for truancy laws by not requiring MOVE children to attend school.³²³ Inattention to the available opportunities for ensuring child protection—including the apparently well-known option of securing the children on their way back from a nearby park prior to the police siege of 6221 Osage—reinforce this lack of official due diligence.

2. The Overinflated Threat

Collectively, these deliberations indicate a degree of desperation that existed within the ranks of Philadelphia's executive leadership at this juncture with regard to the available legal justification for enforcement actions against MOVE. The juxtaposition of alleged conspiratorial behavior by MOVE that drew intense executive attention as compared to well-established and exigent violations that did not is, however, revealing. First, any attempts at connecting reports of stolen explosives with MOVE, ostensibly corroborated by unsubstantiated assertions by MOVE's neighbors that the group was stockpiling weapons, were speculative at best. The fact that the mayor's inner leadership circle dedicated significant attention to discussion of such unconfirmed suspicions regarding MOVE suggest that the city was prone to worst-case scenario cognitive bias with regard to the group. Both police and the Department of Water would later testify that sewers had been inspected prior to May 13 for escape tunnels and none were found.³²⁴ The previous lack of weapon violations committed by other MOVE members, the failure to discover the alleged arsenal at the Powelton property during the 1978 raid, and the lack of hard evidence presented during Leaphart's 1981 trial regarding explosives conspiracies would seem to suggest that despite its bravado, MOVE was not interested or capable of pursuing military demolition tactics. Why such refuting evidence was not given greater credence during such late-stage deliberations is unknown.

3. Tactical Myopia

Both at this late stage in planning and repeatedly during earlier press conferences, Mayor Goode seemed blind to alternative enforcement inroads that were readily available

³²³ Harry, *Attention, MOVE! This Is America!*, 32.

³²⁴ *Ibid.*, 134.

to his administration. Well prior to this juncture, two MOVE members residing at 6221 Osage had current, outstanding arrest warrants that could have been acted on by Philadelphia Police. Why police at a minimum did not pursue plans to arrest both subjects away from the residence and thus remove two known agitators from the Osage compound prior to the assault is unknown. The city had already telegraphed its intentions to MOVE through previous large-scale deployments, and, by this stage, fears of further agitating the group seemed moot. In addition, the city has tacitly tolerated MOVE's non-payment of financial obligations, eschewing both its options to discontinue utility service and to fully pursue MOVE through civil or administrative means.

Just as former Mayor Rizzo and Director Levinson self-imposed operational limitations by neglecting to utilize police to augment L&I inspections, Mayor Goode's administration seemed blind to the potential use of alternative means of enforcement and creation of legal precedent for official intervention. The MOVE Commission would later criticize this policy of inaction, noting in reference to the mayor's dismissal of the MOVE problem as solely a "police matter" that "the Commissioners of Licenses & Inspections, Human Services, Water and Health each adopted, without questions this 'hands off' attitude. Not a single city commissioner ever questions the Mayor or the Managing Director about the rationale for this policy."³²⁵ In doing so, the city found itself in a situation of perceived amplified threat in which it was politically and operationally compelled to act but had not yet constructed a legal foundation for intervention through enforcement of incremental, albeit "superficial" infractions that—had they been pursued—may have resulted in clear judicial substantiation for prosecutorial efforts.

Outside of these enforcement inroads available to, but not pursued by, city officials was the possibility for civil torts against MOVE by both the city and the surrounding neighborhood. In February and March 1985, approximately 30 of MOVE's neighbors had organized themselves into "The United Residents of the 6200 Block of Osage Avenue" in an effort to protest MOVE's presence and compel action by city

³²⁵ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 23.

officials.³²⁶ The United Residents offered to locate an alternative domicile for MOVE outside Philadelphia, “where they can live as they wish,” but did not seek civil action. Though 15 neighbors did meet with an attorney on the morning of 11 May and agreed to file a civil suit seeking to compel the city to fully enforce the laws against MOVE, such action was obviously too late to prevent the tragic raid two days later.³²⁷ Had the city itself pursued MOVE in civil court, it may have obtained compensatory rulings that might have progressed into asset forfeiture proceedings or alternative injunctions, creating legally firm grounds on which to intervene into the organization itself rather than individual members. Here again, it seems both governmental and private parties were blind to such legally accessible options for reigning in MOVE’s intimidating and disruptive behavior, thereby allowing the conflict to escalate to a point where neither MOVE nor the city felt that any resolution except through open confrontation was possible.

By this point in the ongoing organizational dispute between MOVE and the City of Philadelphia, city officials seemed conditioned to both view MOVE as a larger-than-life threat and one with which an all-encompassing and absolute “final solution” rather than a limited and progressively more intrusive confrontation was inevitable. Though MOVE’s rhetoric was confrontational and laden with threats of violence and despite the fact that previous enforcement action had established weapons acquisition efforts by individual members, city officials categorically ignored legally supported, incremental enforcement opportunities. This strategy was tantamount to appeasement of MOVE’s transgressions, a course of action that likely emboldened MOVE into further antagonizing the government and its surround community in support of efforts to secure judicial redress for its incarcerated membership. Furthermore, by allowing the perennial, simmering confrontation to escalate to the point where MOVE had effectively barricaded itself in preparation for large scale governmental enforcement action, the city created a self-fulfilling prophesy by necessitating a significant use of police force and firepower in support of any enforcement actions taken against the group.

³²⁶ Anderson and Hevenor, *Burning down the House*, 79.

³²⁷ *Ibid.*, 100.

4. Taking MOVE at Their Word

In the absence of reliable information obtained from a cooperating member of MOVE or a well-placed confidential informant within the community, police and city officials' ability to assess the threat posed by MOVE was informed only by their observations and MOVE's rhetoric. With regard to the latter, MOVE's rhetoric was prolific, obscenity-filled, and broadcast loudly via its public address system at both the Powelton and Osage Avenue properties. MOVE would later claim it employed, "strategized profanity to expose the profane circumstances of the system's injustice."³²⁸ Because they had no visibility on MOVE's capabilities or true intentions, outside of the threats delivered in expletive-laden tirades that included threats of death and violence to named city officials, police and politicians took the group at its word. MOVE had first been labeled "terroristic" in 1978, when members were charged with "terroristic threats"—interestingly, a misdemeanor crime at that time.³²⁹ On the 20 May 1977 "guns on the porch" day, MOVE released a statement to police claiming police should not attempt to enter the Powelton compound

unless you want an international incident. We are prepared to hit reservoirs, empty hotels and apartment houses, close factories and tie up traffic in major cities of Europe...We are not a bunch of frustrated, middle-class college students, irrational radicals or confused terrorists. We are a deeply religious organization totally committed to the principle of our belief as taught to us by our founder, John Africa. We are not looking for trouble. We are just looking to be left alone.³³⁰

When later asked by the MOVE Commission what type of group he believed MOVE to be, Commissioner Sambor stated, "In a word, a terrorist organization."³³¹

Admittedly, the verbal and written threats from MOVE were disconcerting; on April 29, 1985, MOVE members threatened neighbors over its public address system and

³²⁸ Concerned Citizens in Support of MOVE, *20 Years on the MOVE* (Philadelphia: Concerned Citizens in Support of MOVE, 1992), 6.

³²⁹ Wagner-Pacifi, *Discourse and Destruction*, 27.

³³⁰ *Ibid.*, 30.

³³¹ *Ibid.*, 42.

threatened to kill the mayor.³³² Following the neighbors' first and only news conference in which they plead for official assistance, MOVE claimed they had wired adjoining properties with explosives, which they threatened to detonate if attacked.³³³ Later that same day, while placing a listening device in the property adjacent to the Osage Avenue residence, police were given a note stating MOVE would kill policemen if they attempted to utilize explosives on the MOVE property.³³⁴ Though such explicit threats from MOVE had to be taken seriously, the apparent plausibility assigned to these threats by police and city officials seems disproportionate to the obvious operational capability of the group. The city's previous, repeated enforcement actions that failed to find weapons caches or illegal possession of firearms by MOVE members seemed to be ignored in the face of these threats, a condition only amplified by MOVE's closed, unfathomable nature.

It is unknown if the city and police indeed felt intimidated by MOVE members or by the potential political fallout of intervention into a quasi-religious group whose membership was primarily composed of minorities. More likely, officials had collectively determined that MOVE's actions were indeed protected by the 1st Amendment and that official response to MOVE provocations was hamstrung due to the potential that any actions could be deemed prejudicial or an infringement of members civil rights. It should be recalled that in 1977 under Mayor Rizzo, the Philadelphia Police Department had been subject to a Department of Justice investigation into civil rights abuses, as well as state legislative hearings into the same.³³⁵ Following the Powelton Village raid, U.S. Attorney General Bell himself traveled to Philadelphia to meet with the Black Public Officials Association, a group formed after the August 8 shooting. After the meeting, Bell formed a federal task force to examine evidence of police brutality in Philadelphia.³³⁶ The caution advised by AUSA Dennis in 1984 likely also resonated in Mayor Goode's and

³³² Anderson and Hevenor, *Burning down the House*, 79.

³³³ Boyette and Boyette, "Let It Burn!," 145–146.

³³⁴ Ibid., 101–102.

³³⁵ Ibid., 18.

³³⁶ Harry, *Attention, MOVE! This Is America!*, 103.

Director Brooks' ears, as they feared having their own administration subjected to the same scrutiny that had plagued Rizzo's last term.

5. The Osage Avenue Assault and Its After Effects

At 5:35 a.m. on Monday, May 13, Commissioner Sambor issued the following curiously expansive ultimatum via bullhorn: "Attention MOVE! This is America! You have to abide by the laws of the United States."³³⁷ According to the police log, MOVE responded: "We ain't got a motherfucking thing to lose, come and get us. Remember we killed Ramp. Is your insurance paid up, your wives will cash them in after today, motherfuckers."³³⁸ Though he announced police had arrest warrants for four of the residents that compelled their peaceful surrender, Commissioner Sambor failed to announce that he also had a search warrant for the 6221 Osage Ave. residence.³³⁹ Fifteen minutes later, police fired and threw tear gas canisters at the front and rear of the MOVE property, fire hoses began to spray the roof, attempting to dislodge the rooftop wooden bunkers, and police bomb squad officers entered an adjacent house to begin breaching operations using high explosives. Shots were reportedly fired from the MOVE house, prompting police to return fire, eventually expending 10,000 rounds of ammunition into the house during the next 90 minutes.³⁴⁰ It was determined that MOVE had constructed a fortified pillbox within the residence, from which members repelled attempts to enter the residence. Shortly after 4 p.m., further attempts to negotiate with MOVE and secure safe release of the children met with silence.³⁴¹

6. Let it Burn

Despite these multiple breaching attempts, insertion of tear gas, and extensive exchange of gunfire, MOVE members could not be expelled from their fortified residence. The fire department had been unable to fully dislodge the wooden rooftop

³³⁷ Wagner-Pacifi, *Discourse and Destruction*, 42.

³³⁸ Anderson and Hevenor, *Burning down the House*, 112.

³³⁹ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 53.

³⁴⁰ *Ibid.*, 17.

³⁴¹ Anderson and Hevenor, *Burning down the House*, 139.

bunker, endangering any attempts to approach the residence. The Philadelphia Police bomb squad finally devised a plan to drop a satchel bomb—containing what would later be contested as a mix of either commercial or military grade explosives—onto the top of the rooftop bunker from a hovering police helicopter. At 5:27 p.m., the head of the bomb squad did just that.³⁴² Although it was reportedly not the police's intention, this explosive, though unsuccessful in dislodging the bunker, did breach the roof and ignite a fire, possibly due to gasoline canisters known to have been stored on the roof by MOVE. Ignoring orders from the mayor to instruct the fire department to extinguish the blaze, Commissioner Sambor, with the fire commissioner's concurrence, made a tactical decision to attempt to control the fire long enough to allow it to destroy the rooftop bunker.³⁴³ According to police logs, by 6:26 p.m., the entire 6221 Osage property was engulfed by flames. The conflagration continued to spread, now out of firefighters' control, to adjoining houses. By the next day, 61 homes had been destroyed, leaving 253 Philadelphians homeless.³⁴⁴

The aftermath of the 13 May operation was financially and politically disastrous for Mayor Goode's administration. Instead of the expected arsenal of illegal weapons, investigators sifting through the rubble eventually discovered only two pistols, a shotgun, and a .22-caliber rifle.³⁴⁵ The MOVE Commission would later suggest that the bodies of the five MOVE children found in the ruins appeared to be unjustified homicides and recommended their deaths be investigated by a grand jury. Investigators found metal fragments in the body of one child that were consistent with 00 buckshot pellets.³⁴⁶ In August 1985, the city signed a \$6.74 million construction contract to replace the houses accidentally destroyed in the fire.³⁴⁷ By the time most families had returned to their new homes by Christmas that year, the cost was at \$9.1 million.³⁴⁸ In November 1986, the

³⁴² Ibid., 146.

³⁴³ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 41

³⁴⁴ Anderson and Hevenor, *Burning down the House*, 154.

³⁴⁵ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 39.

³⁴⁶ Ibid., 52.

³⁴⁷ Anderson and Hevenor, *Burning down the House*, 385.

³⁴⁸ Ibid., 386.

Philadelphia Comptroller's Office announced that the May 13 event had cost the city \$17,737,664, with most of the funds drawn from the city's redevelopment authority.³⁴⁹ By May 1988, 40 civil suits related to the event had been filed against the city.³⁵⁰ A trial against the lone surviving adult member of MOVE present at the Osage property concluded on February 9, 1986 with a conviction on counts of criminal conspiracy and riot; surprisingly, prosecutors were unable to secure convictions on 10 additional counts, including aggravated assault on police officers, the most serious charges levied.³⁵¹

7. The Commission and a Search for Answers

The Philadelphia Special Investigation Commission, formed by Mayor Goode to act as a "board of inquiry" into the May 13 tragedy, released its final report, titled *The Findings, Conclusions, and Recommendations of the Philadelphia Special Investigation Commission*, in March 1986. Though the commission concluded that MOVE had developed into "an authoritarian, violence-threatening cult" by the early 1980s, it criticized the mayor's policy as "one of appeasement, non-confrontational, and avoidance."³⁵² Furthermore, the report found Commissioner Sambor's and Director Brooks' conduct "grossly negligent," as it did the mayor's decisions not to suspend the operation until MOVE children could be removed from the property, to not actively participate in all aspects of the enforcement operation, and to allow explosives to be utilized against an occupied dwelling.³⁵³ Brooks resigned just 10 days after the fire on May 23; Sambor resigned exactly six months later on November 13.³⁵⁴ Though the mayor survived reelection in 1987, the negative public opinion led to District Attorney's Rendell's lost bid for reelection in 1985 and subsequent unsuccessful bid for the Democratic nomination for mayor in 1987.

³⁴⁹ Ibid., 394.

³⁵⁰ Boyette and Boyette, "*Let It Burn!*," 249.

³⁵¹ Harry, *Attention, MOVE! This Is America!*, 155.

³⁵² Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 22.

³⁵³ Anderson and Hevenor, *Burning down the House*, 389.

³⁵⁴ Boyette and Boyette, "*Let It Burn!*," 213, 225.

Philadelphia homeland security officials and political leadership were understandably frustrated with MOVE. The city had to dedicate massive resources to responding to organizationally supported misdemeanor criminal activity and code and inspectional violation litigation that had required elevation on multiple occasions to the state Supreme Court. Additionally, politicians and city executives had sustained over a decade of perennial criticism from impacted constituents in the surrounding community and the media highlighting the city's impotence in dealing with an alternative-lifestyle, obnoxious, often times criminal collection of a few dozen urban revolutionaries with filthy lifestyle habits, ostensibly neglected children, and a collection of near feral pets. MOVE had defaulted on previous generous terms offered by the city to relocate, defied authority, and demonstrated a tendency to violently defend its imminent domain.

The potential for political repercussions against city officials for enforcement of municipal code against MOVE also limited executives' perceived options. Apprehension among city officials to fully enforce existing laws and codes, presumably for fear of exposing themselves to claims of civil rights abuses, racism, or other forms of organizational prejudice created an environment of selective enforcement of the law. The MOVE Commission's findings specifically highlighted this practice, noting in finding number 4, "the managing director and the city's department heads failed to take any effective action on their own and, in fact, ordered their subordinates to refrain from taking action to deal meaningfully with the problem on Osage Avenue."³⁵⁵ The commission also noted, "avoidance of the problem was so pervasive that city officials did not even discuss the issue among themselves."³⁵⁶ It is likely this subsequently emboldened MOVE members to institutionalize and elevate their confrontational stance towards neighbors and governmental officials, as illustrated in finding number 8: "The city's policy of appeasement conceded to the residents of 6221 Osage Ave. the continued right to exist above the law."³⁵⁷ The policy likely also created confusion and indignation among members of MOVE in those instances when legal boundaries were enforced, as

³⁵⁵ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 16.

³⁵⁶ *Ibid.*, 22.

³⁵⁷ *Ibid.*, 16.

such police action was then interpreted as arbitrary, prejudicial, inconsistent, and heavy handed.

MOVE's pattern of violent rhetoric, defensive posture, and disregard for governmental authority gave the city reasons to believe MOVE could be violent, but its assessment of this threat seemed deeply biased towards the sensational. The "guns on the porch" 1977 event, Powelton shootings, and ATF sting established a menacing pattern of armed resistance by MOVE, buttressed by the group's hate-filled harangues, explicit threats, and assaults against neighbors. However, the group had never taken offensive action or perpetrated armed crimes of violence, nor had any previous suspicions of arms caches, automatic weapons, or explosives proven true. Despite significant intelligence gathering efforts, near constant observation of MOVE properties, and repeated law enforcement contact with MOVE members, the city seemed inclined to believe this closed group retained an ability to acquire explosives and weapons caches without being detected. Arguably, the garden variety gangs, narcotics dealers, and armed robbers that pose a perennial criminal threats to a large city such a Philadelphia were better armed and showed greater violent tendencies than MOVE, yet the city presumably did not feel such a significant show of force and employment of assault tactics was necessary to effect warrant searches and felony arrests on this class of miscreants. It seems more likely that it was the closed nature of MOVE buttressed by the city's tendency to take the MOVE's bombastic stated intentions at its word that led three administrations to overestimate the group's true threat.

8. Potential Alternative Outcomes

How could the city have avoided the MOVE confrontations and resulting tragedy? From MOVE's perspective, by allowing MOVE's disruptive, unhygienic, and potentially dangerous activity to expand unabated, the city communicated it either tacitly condoned this behavior or conceded officials political impotence or lack of will to counter it, likely predicated by MOVE's "in your face" defiance. As MOVE Commission member Charles Bowser noted, "Every member of city government and state government who was asked to respond to this profound situation immediately attempted to define the

problems in terms that would permit the application of mundane solutions with which they were most familiar.”³⁵⁸ Instead of enforcing minor infractions and clearly delineating the boundaries between MOVE’s anti-establishment, 1st Amendment protected beliefs and its wholly secular, legally enforceable obligations to refrain from imposing the manifestation of this ideology on the surrounding community, Philadelphia officials found themselves trapped by exigent needs to enforce more serious infractions through intervention. Lacking situational intelligence on this opaque community, officials were compelled to adopt dynamic entry and other tactics employing governmental force in these situations, resulting in seemingly intractable and assault-style confrontations.³⁵⁹

The manifestations of Mayor Goode’s administration’s policy of appeasement and conflict avoidance are likewise well documented in the MOVE Commission’s findings. Most disturbingly,

The construction of the rooftop bunker in October, 1984, was unchallenged by the Department of Licenses & Inspections, despite the obvious violation of city building codes. By permitting the fortification of the rooftop, the city granted to the occupants of 6221 Osage Ave. a critical tactical advantage over the 6200 block of Osage Avenue and over the police.³⁶⁰

Other areas of selective non-enforcement of laws and regulations included allowing MOVE to blockade the alleyway behind the 6200 block of Osage Avenue without challenge from L&I or the Streets Department, to allow unpaid water, gas, and electric bills to accumulate without disrupting service or directing police to escort meter readers and revenue collectors, allowing MOVE children to “[remain] out of school in flagrant violation of truancy laws,” and permitting the Health Department to ignore repeated complaints by neighbors regarding open garbage, rats, insects, and feral animals at the property.³⁶¹ All of these violations, had they been promptly investigated and enforced, would have facilitated access to the MOVE property, allowing officials to

³⁵⁸ Ibid., 7.

³⁵⁹ Ibid., 17.

³⁶⁰ Ibid., 27.

³⁶¹ Ibid.

gather situational awareness regarding the inhabitants and conditions inside. Timely and consistent enforcement would likewise have provided the city with the legal means to counter MOVE's continued disruptive behavior and, had they not complied, remove MOVE from their fortified property prior to its completion. The Commission's recommendation number 33, "Streamlining of Administrative Response to Crisis Situations" presents a viable albeit nebulous proposal for such enforcement efforts: "The building and zoning codes, health, truancy, and similar regulations should be carefully reviewed and modified, as appropriate, to permit, through the use of citations and court powers, effective enforcement without endangering City personnel."³⁶²

The city also failed to provide an official audience to MOVE's unwavering petitions for release of those members incarcerated following the 1978 raid, unreasonable as the groups demands may have been. The MOVE Commission characterized this policy as flawed, noting in finding number 5: "The city administration discounted negotiation as a method of resolving the problem. Any attempted negotiations were haphazard and uncoordinated."³⁶³ It furthermore notes that based on MOVE's 1985 decision to make release of all of its members from jail the sole basis for negotiation, "because the situation was believed to be inherently volatile, with no hope of acceptable compromise, it was thought that active negotiation would accelerate rather than postpone an ultimate confrontation."³⁶⁴ This lack of constructive, direct communication between the city and MOVE, at least through ad hoc channels, had not always been the case. A Philadelphia police officer noted, "In the early seventies you could talk to a number of MOVE people. Over the period of times, especially after '78, they became very militant and would not discuss anything with you."³⁶⁵ Had the city actively engaged MOVE's demands and provided an outlet for the groups legal frustrations, it may have alleviated some of MOVE's perceptions of official indifference to the group's plight. Though officials apparently assessed such meetings as futile at best or additional opportunities to draw and

³⁶² Ibid., 65.

³⁶³ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 16.

³⁶⁴ Ibid., 24.

³⁶⁵ Wagner-Pacifi, *Discourse and Destruction*, 30.

exacerbate MOVE's ire at worst, it would at a minimum have allowed the city to directly and repeatedly convey its expectations to the group, demonstrated official concern for MOVE's grievances, and constituted a means of communicating with MOVE's leaders outside of duress situations. Use of a dedicated official translator, trained in crisis management, versed in MOVE's worldview, and familiar with the community's cast of characters, could have provided the empathetic sounding board that Philadelphia, in MOVE's estimation, was failing to provide.

Admittedly, MOVE had defaulted on its truce with the city to end the 1978 blockade, eventually leading to the Powelton assault. City officials may have interpreted this event as proof that MOVE could not be taken at its word and that any future conciliatory actions and concessions by the city would only result in further MOVE provocations. MOVE's steadfast insistence that those members "falsely" convicted of the murder of Officer Ramp be released or retried was also likely seen as an illegitimate grievance and one that lay outside the city's sphere of influence, and hence an impossible negotiation piece. However, by both ignoring MOVE's request for negotiation and dialogue and tolerating the group's provocations and illicit behavior over three administrations, the city likely only allowed the community's outrage to boil, leading it to further isolate, and eventually to barricade itself from a situation MOVE increasingly saw as intractable and potentially apocalyptic.

Due directly to the amplification of the perceived threat by both sides, inability to establish effective communication during these periods of duress, and unwillingness to compromise their respective unilateral world views, two significant and numerous minor stand offs had occurred. As evidenced by the 1978 Powelton event, it was not due to the underlying offenses for which MOVE members were being sought but rather directly due to the violent confrontational nature of the now inexorable governmental intervention under less than ideal tactical circumstances, that resulted in MOVE members being charged with serious felonies and capital crimes. Consequently, MOVE likely interpreted what was in its view antagonistic police behavior as the true catalyst for MOVE members to be forced into a corner and then severely punished for acting in self-defense, perpetuating the cycle of perceived victimhood. Ultimately, the purported violent threat

from MOVE seemed to develop in response to, rather than independent of, perceived overbearing police tactics. Only by establishing a constructive dialogue with MOVE, including communicating MOVE's legal responsibilities and enforcing infractions in a graduated manner, could Philadelphia potentially have avoided allowing this opaque community from having destroyed 11 lives, 66 houses, and a city administration's reputation with its entire constituency.

Bowser distilled the issue concisely in his opinion within the Philadelphia Special Investigation Commission:

The primary issue to be examined is not the radicalism of the residents of 6221 Osage Avenue, but rather it is our ability to respond appropriately to radicalism without perpetrating a more extreme radicalism. The question which remains with me is not, 'What is MOVE' it is 'What are we?'³⁶⁶

³⁶⁶ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 62.

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VI. FUNDAMENTALIST LATTER DAY SAINTS

“Oh America! What has Texas done to the public servants? We, as Americans, have always put our trust in the police officers. They are there to protect and assist the safety of our homes and our communities. My little 4-year-old granddaughter was witness to an accident with a 4-wheeler ATV. The accident was investigated by a police officer, as is the routine for accidents. My granddaughter was terrified and ran and hid. When the officer was finished taking pictures and interviewing all concerned, her little heart and mind were so relieved that she said, ‘A police officer came to our house, and he didn’t even steal us!’”

—Heide Barlow, Former resident of YFZ Ranch, Eldorado, Texas

A. BACKGROUND AND CONTEXT

The Fundamentalist Church of Jesus Christ of Latter Day Saints (FLDS) is a controversial minority sect of the mainline Mormon Church comprising a number of diaspora scattered throughout the western United States, Canada, and Mexico. Though not all affiliated with the church, informal surveys estimate that approximately 38,000 people residing primarily throughout the Rocky Mountain region consider themselves to be Fundamentalist Mormons.³⁶⁷ As it exists today, the FLDS church numbers approximately 10,000 members who congregate in enclaves and opaque communes, primarily located in Utah, Arizona, Texas, Idaho, Colorado, South Dakota, and British Columbia, Canada.³⁶⁸ The border-straddling municipalities of Hildale, Utah and Colorado City, Arizona—commonly referred to as “Short Creek”—comprise the largest discreet FLDS diaspora. Throughout its almost 125-year history, the FLDS has been repeatedly subjected to investigations and state scrutiny due primarily to its continued support and practice of polygamy, which adherents view as a core tenet of their religious faith. Though the group has thus far never resorted to violent resistance of governmental

³⁶⁷ Utah Attorney General’s Office, Arizona Attorney General’s Office, and Family Support Center, *The Primer—A Guidebook for Law Enforcement and Human Services Agencies Who Offer Assistance to Fundamentalist Mormon Families*, 2011, http://attorneygeneral.utah.gov/cmsdocuments/The_Primer.pdf, 7.

³⁶⁸ *Ibid.*, 18.

intervention, FLDS communities have grown increasingly withdrawn and secretive, particularly since the incarceration of the groups' spiritual leader and self-professed prophet in 2006. The current strained relationships between FLDS enclaves, their surrounding communities, and homeland security stakeholder entities have resulted in a stalemate of mutual mistrust, suspicion, and hostility.

Homeland security stakeholders have repeatedly found themselves challenged to deal with alleged criminal behavior perpetrated by FLDS members. These difficulties are attributable to the social impenetrability of most FLDS enclaves and reluctance by both suspected victims and potential cooperating absconders to cooperate with law enforcement entities. Official efforts at maintaining contact with and situational awareness of FLDS communities are further constrained by legal sensitivities of monitoring what are essentially simultaneously large-scale communes of interwoven families and minority religious groups. Frustration with endemic and pervasive suspected illegal behavior by FLDS members has led to three massive and indiscriminate raids against FLDS communities in three states over the last 100 years, most recently in 2008 in Eldorado, Texas. While the enforcement aspirations of these interventions were admirable and well intentioned, the closed nature of FLDS enclaves appears to have resulted in series of repeated false assumptions by officials, tactical missteps, and instances of governmental persecution of entire communities rather than enforcement actions targeting individual suspected criminal actors. While having largely failed to curtail the FLDS' illicit behavior, liberate presumed intending absconders, or penetrate the community's opacity, these interventions have instead resulted in significant economic, political, and social costs for the agencies and jurisdictions involved.

After providing a historical background to the FLDS and Yearning for Zion (YFZ) Ranch in Eldorado, Texas, this chapter will explore whether the arcane and closed nature of the FLDS has contributed to a flawed interpretative framework among homeland security stakeholders in whose jurisdictions the FLDS communities reside. In particular, a tendency to seek grounds for official intervention into the group, prompted by the lack of situational awareness of FLDS activities and intentions and suspected illicit behavior that offends the prevailing social conscience, will be explored through

examination of the 2008 YFZ Ranch raid. Though FLDS, unlike the other opaque community case studies analyzed, has neither resorted to violent resistance nor ceased to exist, it too has proven itself to be a perennial homeland security challenge whose solution may involve adoption among homeland security stakeholders of an alternative interactional framework to prevent continued repetition of past interventional missteps.

1. Roots of Succession

As a splinter sect of the mainstream Church of Jesus Christ of Latter-day Saints (LDS), more commonly referred to as the Mormon Church, what would become the FLDS traces its origin to a contested succession initiated in 1890 by its founder Lorin C. Woolley. FLDS members believe that plural marriage consisting of a patriarch with multiple wives and many children, a practice they refer to as “the Principle,” is a central prerequisite for God’s faithful to enter the Celestial Kingdom.³⁶⁹ Joseph Smith, founder of the LDS church, had provided religious justification supporting plural marriage following an 1843 divine revelation. However, the 1862 Morrill Anti-Bigamy and 1882 Edmunds Anti-Polygamy Acts had essentially outlawed the practice, and, despite its having been tolerated by the mainline church, LDS president Wilford Woodruff revised the official ecclesiastical view on plural marriage and outlawed the practice in 1890. Note that this prohibition had followed almost 38 years during which the Utah Territory attempted to gain statehood in vain, largely due to congressional ire at Mormons’ failure to make polygamy a punishable crime. After Utah conceded to congressional demands to ban polygamy in the state constitution per the 1894 Enabling Act, Utah gained statehood in 1896. The church reinforced the secular prohibition with a “Second Manifesto” in 1904 by threatening all adherents who continued to practice bigamy with excommunication.

This apparently secularly influenced reinterpretation of what many LDS members viewed as a core tenet of their faith as espoused by LDS’s founding prophet Smith did

³⁶⁹ Martha Bradley Evans, “The Past as Prologue: A Comparison of the Short Creek and Eldorado Polygamy Raids,” in *Saints under Siege: The Texas State Raid on the Fundamentalist Latter Day Saints*, ed. Stuart A. Wright and James T. Richardson (New York and London: New York University Press, 2011), 28. 25–50.

not go uncontested, leading ultimately to a succession crisis. FLDS founder Woolley alleged that in 1886, then LDS president John Taylor experienced a “Divine Revelation” that preempted the “official” prohibition by Taylor’s successor Woodruff. According to Woolley, the spirit of Prophet Joseph Smith visited then President Taylor, himself having gone into hiding from federal authorities in January 1885 to avoid polygamy charges (he would die while still in hiding two years later). After receiving Smith’s message, Taylor instructed the nine men present with him, including Woolley and his son, to continue the practice of polygamy, referred to as the “Principle.” Furthermore, he allegedly conferred “priesthood” status on five of the men, allowing them to perform plural “celestial” marriages and ordain others to do the same. It is the legitimacy of this privileged priesthood authority, revoked from LDS mainline adherents with the official prohibition in 1890, which constitutes the primary division point between LDS and the FLDS sect.³⁷⁰

The FLDS, now facing excommunication from the mainline Mormon Church and forced to choose between continuation of a practice it believed was essential to achieve eternal salvation and adherence with state, federal, and contested ecclesiastical prohibitions against the same, found itself a persecuted minority. Polygamist adherents had already begun during the 1880s to flee federal arrest and prosecution by relocating to rural enclaves in Utah, Arizona, Idaho, and Nevada. Following increased LDS enforcement of the ban during the 1910s, bigamists first settled in Short Creek, and the enclave grew into a refuge location for fundamentalists through the 1920s. After becoming head of the Priesthood Council in 1935, John Y Barlow encouraged his followers to converge at Short Creek, drawing approximately 40 polygamist families; that same year, LDS excommunicated three FLDS members living there.³⁷¹

2. A Legacy of Official ‘Persecution’

Short Creek would experience two anti-polygamy raids targeting FLDS members during the twentieth century. During the 1944 “Boyden Raid,” federal and state officials

³⁷⁰ “World Religions & Spirituality Project VCU,” Virginia Commonwealth University, 2011, accessed May 18, 2014, <http://www.has.vcu.edu/wrs/profiles/FLDS1.htm>

³⁷¹ Ibid.

arrested 50 men and women in both Arizona and Utah, charging them with conspiracy, Mann Act (transporting women over state lines for immoral purposes), and Lindberg Act (kidnapping) violations. After serving a portion of their sentences in Utah state prison, 15 men would sign a loyalty oath, which led to their early release.³⁷² On July 26, 1953, Arizona Governor Howard Pyle led a massive and highly publicized raid against Short Creek, announcing via radio his intention to, “protect the lives and future of 263 children,” and to battle, “insurrection within [Arizona’s] own borders...[and]a community dedicated to the production of white slaves who are without hope of escaping this degrading slavery from the moment of their birth.”³⁷³ In order to gather evidence of polygamist activity and intelligence on the community prior to the raid, in April 1951, Governor Pyle hired a Los Angeles detective agency to masquerade as a film company searching for locations. Brandishing movie equipment, the Burns Detective Agency photographed every man, woman, and child in Short Creek, gathering evidence of illegal tapping of state electrical power, tax fraud, and health and safety issues Pyle characterized as “subhuman conditions” that were “unfit for animals let alone human beings.”³⁷⁴ Armed with warrants charging 36 men and 86 women with rape, statutory rape, carnal knowledge, polygamous living, cohabitation, bigamy, adultery, and misappropriation of school funds, over 100 state officials descended on Short Creek and set up a magistrate’s court in the town’s schoolhouse and comprehensively visited each residence to collect evidence of polygamy.³⁷⁵ Despite the entire Short Creek community having been forewarned of the pending raid, FLDS members offered no resistance, preferring to gather in prayer at schoolhouse.³⁷⁶

Ultimately, officials served warrants on 122 adults, with the men transferred to jail in nearby Kingman and the women forcibly relocated to Phoenix.³⁷⁷ After processing

³⁷² Ibid.

³⁷³ Evans, “The Past as Prologue,” 26.

³⁷⁴ Ibid., 26–27.

³⁷⁵ “World Religions & Spirituality Project VCU,” Virginia Commonwealth University.

³⁷⁶ Evans, “The Past as Prologue,” 29–30.

³⁷⁷ “Raid on a Polygamist Town: Arizona, 1953,” *LIFE Magazine*, accessed September 1, 2013, <http://life.time.com/history/raid-on-a-polygamist-town-1953/#ixzz2dekpxkUl>

all of the Short Creek children through juvenile court, Arizona made 153 minors of polygamist families wards of the court, relocating them to foster homes in Mesa and elsewhere. Following resolution of their cases during the next two years, all of the impacted mothers returned to Short Creek except one minor who herself also returned once she was legally old enough to do so.³⁷⁸ After spending some pre-trial time in jail, all of those men convicted of bigamy would be released on probation.³⁷⁹ In addition to the failure by prosecutors to obtain convictions on the more serious charges, the raid would result in serious political fallout for Governor Pyle. In describing the raid some weeks later, *LIFE* magazine would criticize the massive show of force, commenting, “it was like hunting rabbits with an elephant gun.”³⁸⁰ Many attribute the governor’s failure to win reelection on the unpopularity of the raid, which received significant media and public reaction as being overly intrusive into private affairs.³⁸¹

Although the Pyle raid, perhaps more than the Boyden raid, attempted to target specific polygamist crimes against known actors, Arizona lawmen and prosecutors arrived at Short Creek, “equipped with extra John and Jane Doe warrants to provide for the unexpected.”³⁸² Presumably, officials surmised large portions of the entire community were either themselves engaged or complicit in bigamist crimes. This circumstance was exacerbated by the sheer operational challenges of deposing large numbers of potential victim witnesses, all having interlaced familial ties throughout the small community, and some of whom might simultaneously be potential co-conspirators and/or motivated to conceal pertinent data due to the threat of judicial removal of family members. The result was an enforcement action that, by its very nature, was necessarily prejudicial against an entire community rather than directed against specific known criminal actors and events. The lack of enforcement “success” of both raids in terms of prosecutions and abatement of polygamist behavior, combined with the sociological

³⁷⁸ “World Religions & Spirituality Project VCU,” Virginia Commonwealth University.

³⁷⁹ “Raid on a Polygamist Town: Arizona, 1953,” *LIFE Magazine*.

³⁸⁰ *Ibid.*

³⁸¹ Ross, “Legal Constraints on Child-Saving,” 389.

³⁸² “Raid on a Polygamist Town: Arizona, 1953,” *LIFE Magazine*.

impact of seemingly unwarranted official intrusion into individual FLDS nuclear families, would solidify the community's distrust of governmental intentions. As a result, the FLDS grew increasingly secretive, closing itself off from outside intrusion and preparing future generations to view any cooperation with government agents as having the potential to result in the forcible disintegration of family unity.

3. Schism Redux

Until 1981, leadership of what would become the FLDS was passed down through membership to the Priesthood Council, with the senior member of the group acting as its leader. That year, a schism developed stemming from diverging interpretations of priesthood leadership, control over members' property, and social practices of the group. Church control over the group's communal assets is, in particular, a potentially controversial topic. In 1942, adherents living in Short Creek had established the United Effort Plan (UEP)—a trust created to facilitate the group's belief in communally held and administered property. This trust permeates essentially every aspect of church members' financial life. Members' homes belong to the trust, they work in trust-owned businesses, their wages support it, and their food and consumables are purchased by it. Church leadership makes all decisions regarding the use of trust funds according to religious principles.³⁸³ While one camp advocated following the council tradition, a progressive counter movement, led by Leroy Johnson beginning in 1984, advocated a "one man doctrine," according to which a single church president would rule until Christ's second coming. This revision would set the stage for an unprecedented consolidation of religious, financial, and social power over FLDS adherents within a single person. Rulon T. Jeffs assumed control over the group in 1986, excommunicated dissenting members, and formally established the FLDS.³⁸⁴

Rulon's son Warren Jeffs succeeded his father upon Rulon's death in 2002 following a stroke. As his father had 16 years earlier, Warren claimed by virtue of a

³⁸³ Lindsay Whitehurst, "Utah Takeover of FLDS Property Trust Ruled Unconstitutional," *The Salt Lake Tribune*, February 24, 2011.

³⁸⁴ "World Religions & Spirituality Project VCU," Virginia Commonwealth University.

revelation to be the next FLDS prophet. However, FLDS insiders reportedly believed Warren had exploited his father's weakened state to depose the then bishop of the Bountiful, British Columbia diaspora, a potential rival for the FLDS presidency.³⁸⁵ Note that this distillation of ecclesiastical power, first through the dissolution of the Priesthood Council and establishment of "one man" doctrine, reinforced via claims of prophetic revelation, and finally bolstered through marginalization of potential internal sources of opposition, had effectively transformed the FLDS into an autocratic theocracy. By claiming to have both personal revelation of God's will and total dominion over the group's means of salvation through unique priesthood abilities to ordain celestial marriages, Jeffs effectively holds full control over all aspects of members' religious and domestic affairs. Jeffs is alleged to hold god-like control over his followers, with some alleging adherents would be willing to commit violence at his command.³⁸⁶ His capricious behavior and, on occasion, apocalyptic prophecies, coupled with his adherents perennial distrust of governmental intervention, have exacerbated an already strained environment for the development of community policing and homeland security agency interface with the group.

4. FLDS Seeks a New Zion

Having now realized that their forefathers' establishment of a remote yet still public enclave such as Short Creek was a flawed means of avoiding religious persecution, the FLDS have apparently subsequently explored the establishment of private compounds as a means of escaping scrutiny. Note that aside from privacy concerns, two ideological aspects to FLDS religious belief contribute adherents' selection of ideal domiciles. According to FLDS eschatology referred to as the Enoch narrative, God's chosen will achieve salvation through the rapture once they establish a utopian community on earth (Zion), in which all members act in strict accordance with God's wishes as revealed by their prophet. LDS founding Prophet Joseph Smith professed this vision of Zion building as a paradigm for the Mormon faithful, tracing references to biblical scripture from the

³⁸⁵ Ken MacQueen, "The Battle for Bountiful," *Maclean's* 117, no. 50 (2004): 1.

³⁸⁶ *Ibid.*, 1.

seventh chapter of the Book of Moses and transposing God's covenant with Enoch into a geographic or place-based millenarian dogma.³⁸⁷ As realization of this goal requires all those present within the targeted geographic location to both believe in and adhere to FLDS theology, establishment of such a community within a public municipality such as Short Creek is necessarily problematic. Jeffs specifically referenced alleged defilement of Colorado City as justification for the move to Eldorado, stating, "It was no longer a place for his people where the spirit of God could dwell."³⁸⁸ To varying degrees, FLDS leadership had rationalized their false predictions of the impending rapture of Short Creek in 1984, 1999, and 2005 on the behavior of the community, with Jeffs explicitly blaming members' lack of faith and perseverance for the failure of his 2005 prophesy. This understandably led to disillusionment and disappointment, providing motivation for FLDS members to renew their dedication to their prophet's instructions and adherence to religious dictates. A "contamination" of Short Creek by unbelievers and the uncontrolled presence of adulterating foreign influences could likewise be seen as causes for these unfulfilled predictions. Consequently, this situation also promotes a motivation among adherents to relocate to pristine domicile locations wholly controlled by the church.

Second, FLDS adherents reportedly believe that girls should marry while in their early teens, as females are taught to believe that becoming a wife and bearing children is the highest goal.³⁸⁹ In 2001, the age at which someone could marry with parental consent in Utah was increased from 14 to 16, though both Utah and Arizona prohibit sexual activity involving unmarried minors under 18.³⁹⁰ The FLDS relocation to jurisdictions such as Texas, which, at that time, allowed marriage with parental consent to girls as young as 14, allowed FLDS members to legally marry at least one minor. From the FLDS point of view, though this circumstance would not affect other "celestial" marriages, it is at least conceivable that relocation to such a "favorable" venue would legitimate pregnancies among girls who might otherwise be targeted by law enforcement as

³⁸⁷ Evans, "The Past as Prologue," 43–44.

³⁸⁸ *Ibid.*, 44.

³⁸⁹ Utah Attorney General's Office, Arizona Attorney General's Office, and Family Support Center, *The Primer*, 19.

³⁹⁰ *Ibid.*, 34.

potential statutory rape victims. It is unknown if or to what extent such legal circumstances contributed to FLDS leadership's decision to select Eldorado as a location for its largest new compound.

B. YEARNING FOR ZION RANCH

In November 2003, David Allred, president of YFZ Land, LLC and FLDS leader Warren Jeffs's son-in-law, purchased several parcels of property in Schleicher County, Texas. Shortly after this purchase, FLDS workers began construction on three 10,000 square foot dormitories and a cement plant. Allred initially alleged the 1,691-acre former ranch north of Eldorado was to be used as a "corporate hunting retreat," although actual construction undertaken clearly indicated that multi-family dwellings were the intended use for structures built.³⁹¹ Other improvements including a clinic, cheese plant, limestone quarry, commissary, grain silo, and wastewater treatment facility would follow, establishing the ranch as a self-sufficient community. Significant security investments were also made, including construction of 10-foot high spiked walls with watchtowers, installation of infrared night-vision entrance surveillance cameras, and the stationing of sentries.³⁹² Most prominently displayed was a massive white marble temple, surrounded its own inner fence, which included a nearby annex.

It would appear that what would eventually be named the "Yearning for Zion" Ranch was conceived as a utopian compound for the most loyal FLDS adherents. The ranch was named after the song "Yearn for Zion," penned by Jeffs himself.³⁹³ Jeffs reportedly invited selected adherents to Eldorado from enclaves in Short Creek, Bountiful, and elsewhere. In 2004, the FLDS lawyer Rod Parker of Salt Lake City noted the group had not provided a specific rationale for the establishment of the YFZ Ranch, speculating that church leadership likely sought more privacy, freedom, and control over

³⁹¹ *CBS News* and AP, "From Hunting Ground to Polygamist Ranch," *CBS News*, April 18, 2008, <http://www.cbsnews.com/news/from-hunting-ground-to-polygamist-ranch/>

³⁹² *Ibid.*

³⁹³ "FLDS No Longer Says Texas Property Will Be a Hunting Retreat," Associated Press, May 3, 2004, <http://culteducation.com/oldserverbackups/www/web/group/1099-polygamist-groups/16518-flds-no-longer-says-texas-property-will-be-a-hunting-retreat.html>

outside influence.³⁹⁴ Given the FLDS's focus on establishment of a discreet, geographically bounded enclave as a prerequisite for the biblical rapture of God's chosen, it is likely that the YFZ Ranch was envisioned as a means of controlling physical access to a location unsullied by secular desecration and intrusion by non-believers. The "failure" of previously predicted raptures by church leadership could understandably be interpreted among the FLDS as evidence of the need for such a community. The spiritual motivation to both provide support to the ranch's financing and construction, as well as fealty towards Jeffs to ensure one's inclusion among the compound's inhabitants, would also be understandably intense among FLDS adherents.

1. The FLDS Stigma

Prior to their arrival in Eldorado, an aura of potentially illegal activity surrounded numerous FLDS communities and enclaves, most notably the twin cities that comprise Short Creek. In addition to the perennial and well-founded claims of polygamy, anti-cult activists, absconders, and other FLDS opponents frequently reported that church leadership trafficked young, potentially juvenile female members to be assigned as plural "celestial" brides.³⁹⁵ Girls as young as 12 were reportedly often married to much older men whom they may or may not know and moved between Short Creek and other enclaves, across state lines, and, in the case of the Bountiful, British Columbia community, across national borders.³⁹⁶ Such activity coincided with FLDS core beliefs regarding the "Principle" and, in particular, with Jeffs's autocratic style and management of his priesthood duties. According to FLDS doctrine, as the prophet, Jeffs can remove a child, wife, or even an adult male and reassign them to another family. In some FLDS communities, children sharing a common father are reportedly voluntarily rotated among that husband's wives to prevent the formation of close bonds between mother and child.³⁹⁷

³⁹⁴ MacQueen, "The Battle for Bountiful," 2.

³⁹⁵ "FLDS No Longer Says Texas Property Will Be a Hunting Retreat."

³⁹⁶ Andrea Moore-Emmett. "Behind the Cloak of Polygamy," *Ms* 18, no. 3 (2008, summer): 46–49.

³⁹⁷ *Ibid.*

In addition to crimes related to polygamy itself, prosecutors in both Utah and Arizona had investigated numerous allegations of incest, child abuse, tax and welfare fraud, and involuntary marriages between young girls and adult males.³⁹⁸ Whether attributable to incest or overlapping and interwoven familial ties, evidence does suggest that FLDS communities are impacted by chromosomal defect diseases and do draw significant amounts of public assistance. The FLDS twin communities at Short Creek exhibit the highest global prevalence of fumarase deficiency, a rare genetic disorder that causes mental retardation, nervous system disorders, and epileptic seizures.³⁹⁹ FLDS critics note that this is not viewed as necessarily worrisome among FLDS adherents, who believe the public assistance granted families of disabled children coincides with FLDS ideology in support of “bleeding the beast.” This refers to purposeful draining of federal resources in support of FLDS and the eventual collapse of the government followed by the ascendancy of the prophet. In 2002, according to figures compiled by the *Salt Lake Tribune*, the approximately 6,000 residents of the neighboring communities comprising Short Creek received \$8 million in public assistance, and 66 percent of Hildale, Utah residents received Medicaid assistance, ten-times higher when compared to a Utah-wide average of 6.5 percent.⁴⁰⁰ In addition, as “celestial” wives of adherents with whom they cohabit do not take their husband’s surnames, they are often eligible for government assistance as single mothers.⁴⁰¹ The potential for both inundation of local social services and fraudulent assistance claims given such a high incidence of disability benefits would understandably be worrisome for any potentially impacted community or state.

2. Insurgency Fears

In addition to these domestic crimes, FLDS communities had developed a reputation for infiltration and control of municipal institutions by members whose

³⁹⁸ “FLDS No Longer Says Texas Property Will Be a Hunting Retreat.”

³⁹⁹ Brooke Adams, “Physician Finds Rare Disease in FLDS Kids; Genetic Disorder: About 20 Cases Have Been Discovered in 15 Years in Two Polygamous Towns; Rare Disorder Not Evident at Birth,” *The Salt Lake Tribune*, February 11, 2006.

⁴⁰⁰ Moore-Emmett, “Behind the Cloak of Polygamy.”

⁴⁰¹ Utah Attorney General’s Office, Arizona Attorney General’s Office, and Family Support Center, *The Primer*, 18.

primarily loyalty was to the church. These concerns had historical precedence in FLDS' official influence in Short Creek, where non-members are alleged to have little political say. It is well known that for many years, FLDS member have occupied governmental positions in the twin municipalities there and are widely alleged to control the city council, police departments, and elected positions.⁴⁰² The Utah and Arizona divisions of Peace Officers Standards and Training decertified the Colorado City police chief and multiple police officers for bigamy violations and improper handling of a child sex abuse case. Other infractions included officers' refusal to cooperate with state law-enforcement efforts, including refusing to testify at a grand jury proceeding.⁴⁰³ Since 2003, Arizona has decertified six officers employed by the Colorado City Marshal's Office; a seventh officer resigned after having been decertified by Utah officials. A Hildale judge was also removed by the Utah Supreme Court for violating the bigamy law.⁴⁰⁴ Collectively, such actions indicate a concerted and invasive effort by church members to place secular order and rule of law second to church doctrine and priorities. Understandably, such events stigmatized any newly established FLDS enclaves, particular in sparsely populated rural areas whose residents could conceive they might be purposely targeted for a FLDS takeover of civil government.

3. Schleicher County Engages

Schleicher County Sheriff David Doran became aware of the group's religious fundamentalism in March 2004, when local paper *The Eldorado Success* broke news of the ranch's true purpose in an article titled, "Corporate Retreat or Prophet's Refuge?" While researching the compound, the *Success's* editors had received a call from anti-polygamy activist and former FLDS member Flora Jessop, who provided the initial background information on suspected activities and intentions of the property's owners,

⁴⁰² Ibid.

⁴⁰³ U.S. Attorney's Office, District of Arizona, "Civil Complaint—United States vs. Town of Colorado City, Arizona) City of Hildale, Utah; Twin City Power) and Twin City Water Authority, Inc.," June 21, 2012, <http://www.justice.gov/crt/about/hce/documents/coloradocitycomp.pdf>, 8.

⁴⁰⁴ Utah Attorney General's Office, Arizona Attorney General's Office, and Family Support Center, *The Primer*, 18.

albeit in a negative light.⁴⁰⁵ Jessop would also reach out to Sheriff Doran to express her concerns regarding the property. Despite obvious parallels to the Branch Davidian movement, Sheriff Doran initially rejected a comparison to the Mount Carmel compound, noting, “The dynamics of this are totally different than Waco.”⁴⁰⁶ Presciently, Doran likewise stressed that there was no legal cause for law enforcement intervention at that time, noting, “I take this very seriously, but at the same time, we have to understand that the people working out there and those who may soon be living out there have rights, too.”⁴⁰⁷

Sheriff Doran’s uncharacteristically cautious and circumspective posture towards the FLDS community just months after its establishment in Schleicher County was both laudable for its tolerance and legally judicious given the available known circumstances at the compound. Members of the surrounding community, understandably curious about their strange new neighbors, quickly grew suspicious. Rumors developed suggesting the group may attempt to indoctrinate locals or endeavor to act as a voting bloc to hijack local political offices—as they had in Short Creek—through their overwhelming numerical superiority.⁴⁰⁸ Unfounded claims circulated suggesting child graves in Short Creek’s cemeteries indicated the group committed infanticide. Salacious media reports that Jeffs had installed a high-temperature incinerator at the YFZ Ranch to dispose of bodies also swirled, gaining traction in the absence of refutations by the group.⁴⁰⁹ Given such concerns, Doran’s official reluctance to immediately placate public concerns regarding a controversial and impervious group, particularly one that obtained a sizeable parcel under false pretense, was likely politically contentious for this elected official. Indeed his immediate contention that, barring evidence of criminal predicate, the civil rights of the FLDS members were also sacrosanct could well have been misinterpreted as

⁴⁰⁵ *CBS News* and AP, “From Hunting Ground to Polygamist Ranch.”

⁴⁰⁶ MacQueen, “The Battle for Bountiful,” 2.

⁴⁰⁷ “Corporate Retreat or Prophet’s Refuge?,” *The Eldorado Success*, March 25, 2004.

⁴⁰⁸ *CBS News* and AP, “From Hunting Ground to Polygamist Ranch.”

⁴⁰⁹ Michael William Hamilton, “Reader Responses to the Yearning for Zion Ranch Raid and Its Aftermath on the websites of the Salt Lake Tribune and the Deseret News,” in *Saints under Siege: The Texas State Raid on the Fundamentalist Latter Day Saints* (New York and London: New York University Press, 2011), 118.

official sympathy towards the group rather than objective pursuit of evenhanded treatment under the law.

Despite its being a political gamble, Sheriff Doran's measured and non-confrontational approach towards the inhabitants of the YFZ Ranch did initially prove fruitful in establishing a dialogue with the community. In May 2004, Sheriff Doran invited Washington County, Utah Sheriff Kirk Smith and Undersheriff Pete Kuhlmann to Eldorado. At his request, these officials, whose jurisdiction includes the Hildale, Utah portion of Short Creek, met with and provided information on their experiences with knowledge of the FLDS to 22 community leaders during a two-hour question-and-answer session. During this visit, YFZ Ranch spokesman David Allred and other FLDS leadership also agreed to a meeting with officials. Allred conceded that his initial statement regarding intended use of the ranch was a failed attempt at avoiding public scrutiny and that the group intended to construct no more than five buildings for 200 residents, all of whom would be the "closest followers of Warren Jeffs."⁴¹⁰ Likely based primarily on such attempts at inviting open dialogue with local FLDS leadership, Doran gradually established a rapport with FLDS leadership, becoming one of the few non-members allowed on the property before the 2008 raid.⁴¹¹

Despite these early successes, attempts by law enforcement to establish dialogue with the group remained strained by the FLDS' opacity, eschewal of governmental contact, and organizationally enforced secrecy. One member with whom Doran established a relationship was excommunicated and his wives reassigned to other men.⁴¹² Such official opprobrium from the church's senior most leadership sent a piercing message to other potential sources and confidants from within the community. Upon excommunication, the wives and children are told that their husband/father no longer holds the "priesthood" status, and thus cannot exalt them in heaven. As such, dependents often embrace reassignment to other families rather than themselves face

⁴¹⁰ "FLDS No Longer Says Texas Property Will Be a Hunting Retreat."

⁴¹¹ *CBS News* and AP, "From Hunting Ground to Polygamist Ranch."

⁴¹² MacQueen, "The Battle for Bountiful,"2.

excommunication by remaining loyal to their patriarch.⁴¹³ Excommunicated members are also evicted from their church-owned domiciles and lose their employment at FLDS-affiliated businesses, all of which belong to the church administered UEP trust. Such punishment not only jettisons those who collaborate with law enforcement from their family and social setting and expropriates their collectively administered property and means of welfare. According to FLDS doctrine, this punishment effectively strips a member's chances at achieving eternal salvation. Due to the intertwined nature of most FLDS families, even upon excommunication, departing former members may be unwilling to provide information on the community due to the threat of reprisal activity against relatives who remain in the church. Accordingly, given the hierarchical nature of the FLDS enclaves, in which the local bishop reigns according to a modified "one man rule" doctrine, it appears that successful interface with the FLDS leadership is the only organizationally tolerated means of interacting with the community, obtaining information, and resolving any inter-community disputes.

In addition to its benefits in establish dialogue and rapport with the closed group, such early, proactive attempts at dissuading public fear regarding the group is a paradigmatic, modified community policing response to a closed community such as the YFZ Ranch. Incorporating best practice advice from other homeland security officials who themselves had longstanding experience with the FLDS community likely greatly enhanced Eldorado stakeholders' knowledge of and abilities to effectively interpret FLDS behavior, preventing misinterpretation of the group's intentions or conduct. By directly addressing the concerns of the surrounding community, Sheriff Doran likewise utilized information to assuage public fear and distrust colored with cultural bias and the innate "threat of the unknown." Though these initial efforts were likely highly effective, the concerns and separate agendas of regional and state actors would ultimately expand the focus on FLDS activities outside Eldorado and Schleicher County, perhaps primarily due to the exploits of the church's leader and prophet Warren Jeffs.

⁴¹³ Utah Attorney General's Office, Arizona Attorney General's Office, and Family Support Center, *The Primer*, 18.

4. The Warren Jeffs Problem

In 2002, Utah prosecutors charged Hildale police officer Rodney Holm with counts of bigamy and unlawful sex with a 16-year-old girl, to whom he had been “spiritually” married in 1998. The indictment followed Jeffs’s refusal to heed admonitions by Arizona and Utah officials demanding a cessation of celestial marriages involving minors, a practice whose frequency had increased significantly since Jeffs’ assumption of the FLDS presidency. Subsequently in 2004, Arizona charged Jeffs with one count of sexual conduct with a minor and one related conspiracy charge. In April 2006, Utah prosecutors levied two first-degree felony counts of rape, alleging Jeffs acted as an accomplice by marrying a teenager to an adult adherent. These charges were followed by federal charges in both states alleging flight to avoid prosecution. Arizona Attorney General Terry Goddard justified these stating that in order to bring “rule of law” to FLDS, authorities needed to, “focus on Jeffs and the ‘messianic’ power he exerts.”⁴¹⁴

For the next year, Jeffs would evade justice, drawing national attention and accompanying negative publicity for the FLDS. In May 2006, the FBI placed Jeffs on its Ten Most Wanted Fugitives list, increasing the reward for information leading to his capture and conviction from \$60,000 to \$100,000. Jeffs was also featured on a segment of the television show “America’s Most Wanted,” where he was portrayed as a tyrannical pedophile.⁴¹⁵ During this time, Jeffs traveled between church-owned safe houses in numerous states, exploiting his dominion over the FLDS congregation members and access to tithed funds to evade arrest and provide support to both him and his wives, later shown by Texas prosecutors to number 78.⁴¹⁶ Finally, in August 2006, Jeffs, one of his wives, and his brother Isaac were arrested while traveling on an interstate just north of

⁴¹⁴ Brooke Adams, “Warren Jeffs: A Wanted Man,” *The Salt Lake Tribune*, May 10, 2006.

⁴¹⁵ Nate Carlisle, “Polygamist Makes FBI Top-Ten List,” *The Salt Lake Tribune*, May 7, 2006.

⁴¹⁶ Brooke Adams, “On the Lam with Warren Jeffs,” *The Salt Lake Tribune*, April 29, 2007; Lindsay Whitehurst, “Warren Jeffs Gets Life in Prison for Sex with Underage Girls,” *The Salt Lake Tribune*, August 11, 2011.

Las Vegas. In his possession, Jeffs carried various disguises, 14 cellular phones, multiple credit cards, various electronic devices, and almost \$68,000 cash in \$100 bills.⁴¹⁷

Following Jeffs' extradition to face charges in Utah, a series of dramatic legal theatrics both in- and outside the courtroom ensued, drawing additional negative publicity to the sect. In September 2007, a Utah jury found Warren Jeffs guilty of charges alleging he was as an accessory to the rape of a 14-year-old girl. Jeffs was subsequently sentenced to two terms of five years to life in prison and was incarcerated in Utah state penitentiary. Three years later, in July 2010, the Utah Supreme Court reversed this conviction citing improper jury instructions. Meanwhile, in July 2008, based on evidence collected during the YFZ Ranch raid, a Texas grand jury indicts Jeffs of sexual assault, aggravated sexual assault, and bigamy. These charges stem from records indicating that in July 2006, Jeffs married a 12-year-old girl at the ranch and fathered a child with another underage female in 2005.⁴¹⁸ Utah subsequently approved Jeffs's extradition to Texas to be tried on these charges while reserving the right to retry Jeffs at a later date.⁴¹⁹ In August 2011, a jury in San Angelo, Texas convicted Jeffs on two counts of child sexual assault against a 12 year-old girl and a 15 year-old girl. Among his 78 known wives, prosecutors showed that Jeffs had "spiritually" joined 12 girls while they were 16 and another 12 who were 15 or younger to other FLDS men. He has been sentenced to life plus 20-years' incarceration but continues to lead the FLDS from prison.⁴²⁰

Jeffs's ascent to power, theocratic rule over the private lives of FLDS members, licentious and criminal behavior, and flight from justice drew intense, primarily negative public scrutiny to the religion. By posturing as alter ego of the church, Jeffs stigmatized the FLDS with his series of personal failures, leading many to assume that community members at once universally condoned his behavior and likely pursued it themselves. However, absent from much reporting on FLDS was the fact that while he continued to

⁴¹⁷ "Polygamist Sect Leader Warren Jeffs Arrested in Las Vegas," *The Salt Lake Tribune*, August 29, 2006, First Story; Local.

⁴¹⁸ Brooke Adams, "Supreme Court: Jeffs Gets New Trial," *The Salt Lake Tribune*, July 27, 2010.

⁴¹⁹ Utah Attorney General's Office, Arizona Attorney General's Office, and Family Support Center, *The Primer*, 18.

⁴²⁰ Whitehurst, "Warren Jeffs Gets Life in Prison for Sex with Underage Girls."

leverage his perceived status and power as prophet, Jeffs was in fact steadily marginalizing himself within the church. His support for the establishment of enclaves in Eldorado, as well as in Mancos, Colorado and Pringle, South Dakota, were in fact based on Jeffs's displeasure with and lack of control over the entirety of the Short Creek diaspora.⁴²¹ Jeffs's successful exploitation of and control over adherents through his perceived ecclesiastical powers to control individual members' expectations for salvation is likewise fairly inconceivable to the non-believer, possibly leading many to assume those who supported his evasion of justice must be acting voluntarily. Accordingly, it is understandable that an impacted adjacent community might view any and all FLDS as Jeffs's willing co-conspirators in the deviant pursuit of institutionalized polygamist pedophilia thinly veiled as extreme religious devotion to nineteenth century Apocrypha.

5. Political Pressures Mount

Following the establishment of the YFZ Ranch and concurrent with Jeffs' descent into criminality, the surrounding Eldorado community's simmering grievances and frustrations drew attention from local politicians. In June 2005, just over a year after the *Eldorado Success* identified FLDS as the group inhabiting the YFZ Ranch property, Governor Rick Perry signed into law legislation introduced by Texas State Representative Harvey Hilderbran proposing two revisions to the Texas Code of Criminal Procedure. These amendments, which became law in September of that year as part of Senate Bill 6, included increasing the legal age of consent for marriage from 14 to 16 and elevated crimes of bigamy and polygamy from misdemeanors to felonies. Statements related to this legislation by Hilderbran, whose district included Schleicher County, indicated they were conceived with FLDS specifically in mind.⁴²² Though this predated the FLDS raid by three years, these efforts clearly indicate the existence of political pressure on Texas politicians to react to the FLDS presence. They likewise portend the emergence among governmental stakeholders of a perceived threat sufficient to

⁴²¹ Adams, "Warren Jeffs: A Wanted Man."

⁴²² James T. Richardson and Tamatha L. Schreinert, "Political and Legislative Context of the FLDS Raid in Texas," in *Saints under Siege: The Texas State Raid on the Fundamentalist Latter Day Saints*, ed. Stuart A. Wright and James T. Richardson (New York and London: New York University Press, 2011), 225–226, 221–241.

specifically prompt amendments to the criminal code to bolster law enforcement's abilities to intercede in presumed FLDS activities. While earlier introducing an even further reaching bill targeting the group, Hilderbran had stated, "I want to keep Eldorado, Schleicher County, and all of Texas from becoming like Colorado City, Arizona and Hildale, Utah, where this cult came from."⁴²³

Though it is difficult to assess the political climate and community's level of dissatisfaction of or hostility towards the FLDS between summer 2005 and April 2008, there are indications that this political pressure to eliminate the group's presence remained intense. Following the discovery of the ranch's connection to FLDS, newspapers in Arizona, Utah, and Texas reported almost weekly on the threat emanating from the group and its prophet. In combination with residents' very limited personal contact with their new neighbors, fears emerged that YFZ could develop into a situation similar to Waco 15 years earlier. As noted by Lalasz and Gonzalez,

Because the FLDS members continued to keep to themselves, these fears, combined with rumors about the illegal activities taking place behind the compound walls, promoted and abetted by anti-FLDS activists, led the general public, politicians, and law enforcement officers to adopt a socially constructed and exaggerated level of fear toward the FLDS community at the YFZ Ranch.

Subsequently, the perceived level of danger emanating from the group grew disproportionate to the actual level of threat, increasing hostility towards the community.⁴²⁴

The YFZ Ranch Raid After years of festering in this environment of suspicion and hostility unchallenged by an official FLDS counter narrative, a criminal complaint by an alleged YFZ Ranch inhabitant generated a seminal moment between the church and the state. According to the Texas Department of Public Safety (DPS) affidavit, on March 29, 2008, the employees of the New Bridge Family Shelter in San Angelo, Texas received a

⁴²³ Ibid., 226.

⁴²⁴ Camille B. Lalasz and Carlene Gonzales, "Large-Scale FLDS Raids: The Dangers and Appeal of Crime Control Theater," in *Saints under Siege: The Texas State Raid on the Fundamentalist Latter Day Saints*, ed. Stuart A. Wright and James T. Richardson (New York and London: New York University Press, 2011), 184–185.

call on their domestic violence crisis hotline from a female caller alleging to be on the YFZ Ranch.⁴²⁵ The caller alleged she was 16 years old, had been at the ranch since she was 13, was pregnant, and had an eight-month old infant. She alleged her 49 year old husband, Dale Barlow, was physically and sexually abusive, and she reported that guards at the ranch prevented her from escaping. Based on the caller's stated age and age of her alleged child, Texas DPS reasoned that Barlow must have committed statutory rape. Considering the gestational period, even had she been 15 at conception, the caller would have been ineligible to marry under the revised Texas law.⁴²⁶ Specifically, the caller stated that Barlow had choked and hit her, beating her so severely on one occasion that she had been taken to the local hospital for treatment. The caller, who identified herself as Sarah Jessop, requested assistance to escape the ranch and seek protection from her abusive spouse.⁴²⁷

6. A Questionable Criminal Complaint

Inasmuch as this tragic and disturbing allegation demanded prompt investigation and response by law enforcement, it likewise required corroboration to determine its veracity. The Texas Rangers quickly assumed the case for investigation. Given that the complaint involved an alleged domestic crime, albeit one that reportedly employed violence, this immediate elevation of the case from a local to a state enforcement agency could be indicative of an intense willingness to pursue enforcement actions against the group. In the course of providing assistance in an attempt to positively identify and locate the alleged perpetrator, Sheriff Doran did discover a Dale Evans Barlow (born November 5, 1957) who had been convicted in Arizona in 2005 for committing sexual conduct with a minor, remained under probation, and had not registered as a sex offender in Schleicher County. Doran further identified a negative match but potential relative of the alleged

⁴²⁵ Wright and Richardson, "Introduction,"1.

⁴²⁶ Leslie Brooks Long, "Affidavit for Search and Arrest Warrant No. M-08-001-S," State of Texas County of Schleicher, April 3, 2008, <http://www.eldoradoflds.us/FLDS-Court/FLDSaffidavit.pdf>

⁴²⁷ Wright and Richardson, "Introduction,"1.

perpetrator in Dr. Lloyd H. Barlow who resided and practiced medicine at a clinic on the YFZ Ranch.⁴²⁸

Additional investigative findings raised suspicions regarding the veracity of the caller's story. According to court documents filed later, case agent Ranger Leslie Brooks Long contacted Mohave County, Arizona Sheriff Alan Pashano to obtain information on the potential matching Dale Barlow identity. Sheriff Pashano notified Sheriff Doran that the identified Arizona resident Dale Barlow had not departed Mohave County since 2007 and had never traveled to the YFZ Ranch. Rancher Long then instructed a sheriff's deputy to contact the local clinic to verify whether a 16-year-old female had indeed been treated there for broken ribs and further abuse. The Schleicher County medical center could find no record of having administered such treatment. It was later determined that even Jessop's identification of Barlow's first name had been prompted in a leading manner by a volunteer at the Newbridge Family Shelter where the abuse call was received. This volunteer had coaxed Jessop into confirming a name from a list of Barlows identified through Internet queries was indeed her alleged husband.⁴²⁹

In the normal course of a reported case of domestic violence received via a third party, law enforcement may have dismissed such a complaint due to lack of verifiable corroborating details. A similar call received by authorities in Arizona the same week from a caller alleging to be a 16-year-old sexual abuse victim in Colorado City was dismissed when officials could not positively identify the caller. In fact, the same caller alleging to be Sarah Jessop contacted a domestic abuse shelter in Snohomish, Washington 35 times between March 22 and April 4, 2008, conversing with a volunteer for a total of 17.6 hours.⁴³⁰ Jessop conveyed a similar story of abuse to Snohomish County officials, alternatively claiming Barlow had moved her to Washington and that she had been reassigned to a new family at the YFZ Ranch. A brief investigation using Jessop's unblocked number traced the call to Colorado, indicating deception. Similar to

⁴²⁸ Long, "Affidavit for Search and Arrest Warrant No. M-08-001-S."

⁴²⁹ Wright and Richardson, "Introduction," 4.

⁴³⁰ Ibid., 5.

Arizona, because they were unable to verify the calls or positively identify the caller, Washington authorities dismissed the reports as well.⁴³¹

It would later be determined that in actuality, Sarah Jessop was a mentally disturbed Colorado Springs woman named Rozita Swinton. In February 2008, Colorado police arrested Swinton for making similar false claims alleging domestic abuse against fictitious female minors. It was later determined that Swinton had been linked to 10 incidents of false allegations made to abuse hotlines and law enforcement agencies nationwide since 2006.⁴³² Though authorities had been duped in some instances into investigating Swinton's fantastic claims, in the Eldorado case, Texas authorities seemed especially determined to assume the legitimacy of the facts presented, despite the aforementioned evidence to the contrary. This rush to invalidate or ignore indications that Swinton's calls were a hoax was perhaps best captured in the Rangers' arrest warrant affidavit, in which none of the disconfirming evidence was presented to signing Judge Barbara Walther.⁴³³ Indications that the speed and complexity of the law enforcement action are evidence of an "off the shelf" plan to raid the YFZ Ranch and allegations that "the government was poised and ready for a trigger that would justify the intervention," likewise suggest that Texas officials were eager to employ the questionable abuse complaint as a potentially flawed yet expedient and available means to breach the FLDS veil of secrecy.⁴³⁴

7. Texas Serves a Warrant

On April 3, 2008, Texas DPS and Texas Department of Family and Protective Services (DFPS), assisted by numerous county and local departments, served the warrant to the YFZ Ranch. FLDS members informed authorities that neither a Dale Barlow nor a Sarah Jessop resided at the property. As the Swinton call had not yet been determined to be a hoax, investigators likely immediately suspected that the community was concealing

⁴³¹ Ibid., 5–6.

⁴³² Ibid., 2–3.

⁴³³ Ibid., 4–5.

⁴³⁴ Evans, "The Past as Prologue," 27; Richardson and Schreinert, "Political and Legislative Context of the FLDS Raid in Texas," 224.

their whereabouts or identity, and thus initiated a house-to-house search for Sarah. Upon questioning female adherents and minors, authorities immediately encountered circumstances that would upend their inquiries into the initial abuse complaint and dramatically alter the focus and conduct of their investigation. Interviewers quickly identified several underage girls who reported having been “spiritually united” with adult males, explaining that “the Prophet” determined when and who a girl should marry, regardless of her age. As questioning progressed, women and children throughout the compound frequently reported they could not answer questions about girls’ ages or the nature of family relationships. Officials determined that children were being moved between locations to prevent investigators from interviewing them. Some minors reported they did not know their birthdates or had been instructed by their parents not to answer investigators’ questions.⁴³⁵

Following their initial search of the property on April 4—6, investigators sought an additional warrant to expand the search based on observations made while on the property. In addition to discovering multiple safes, vaults, and computers at both the temple and an adjacent temple annex, police observed numerous apparently underage females who had children, were visibly pregnant, or both. In addition, the affidavit cites DFPS personnel interviews with multiple FLDS female minors and their aforementioned reports of “spiritual” marriages. Furthermore, the affidavit noted that according to a confidential informant and former FLDS member who had reliably reported to Sheriff Doran on over 20 occasions over the past several years, adult males were known to engage in polygamy with females under the age of 16. It further stated that within the YFZ Ranch temple there was allegedly a bed where adult males engaged in sexual activity with female minors.⁴³⁶

8. A Case Metastasizes

What had begun as the investigation into a domestic complaint in a closed compound inhabited by a fundamentalist Mormon sect would evolve into, “the largest

⁴³⁵ Texas Department of Family and Protective Services, *Eldorado Investigation*, 3.

⁴³⁶ Long, “Affidavit for Search and Arrest Warrant No. M-08-002-S.”

state custodial detention in the U.S. history.”⁴³⁷ By the first evening, DFPS investigators had removed 18 girls after determining they may be victims of underage sexual abuse. As officials conducted additional interviews, they came across supplemental evidence of underage pregnancies, weddings between adolescent females and adult males, and polygamy. Following a Child Protective Services (CPS) determination that removing all 439 FLDS children was the best option due to a determination of immediate danger, the San Angelo District Court granted the state temporary custody of all the YFZ Ranch children three days later. DFPS removed a total of 463 children and accompanying adult women from the ranch, placing them first in mass provisional shelters before moving them to the San Angelo Coliseum complex.⁴³⁸ CPS would eventually determine that 12 girls were victims of sexual abuse and neglect as they had been married between the ages of 12 to 15, meaning 25 percent of the pubescent girls at the ranch were in an underage marriage. Authorities further determined that 262 other children were subject to neglect because parents had failed to remove these children from situations in which, “they would be exposed to sexual abuse committed against another child within their families or households.”⁴³⁹ Of 146 FLDS families investigated at the ranch, 62 percent were found to have abuse or neglect of one or more children.⁴⁴⁰

a. The Identity Crisis

Unable to positively link FLDS children with their biological parents and faced with hundreds of potential victim witnesses, many of whom were uncooperative at best and purposely deceptive at worst, authorities were compelled to embrace comprehensive, intrusive, and unorthodox investigative techniques. To corroborate the veracity of family structures reported during interviews, on April 18, the District Court issued investigators orders to collect DNA from all the FLDS children for paternity and maternity testing.⁴⁴¹ After the court order compelling the collection of DNA, FLDS families became more

⁴³⁷ Wright and Richardson, “Introduction,” 1.

⁴³⁸ Texas Department of Family and Protective Services, *Eldorado Investigation*, 6–7.

⁴³⁹ *Ibid.*, 3.

⁴⁴⁰ *Ibid.*, 4.

⁴⁴¹ *Ibid.*, 8.

forthcoming regarding parental and familial circumstances of the residents.⁴⁴² However, such mass sampling was likely perceived by children to be both intrusive and indicative of criminality among their parents and other adults in the community. Such massive detention, separation, and evidentiary processes must have seemed Orwellian to FLDS families who had little regular contact with those outside the compound. The fact that adherents had long been taught that “gentiles” were a corrupting influence whose presence on the compound might thwart their religious aspirations at creating a utopian enclave of true believers in preparation for salvation through rapture could only have increased their distress, distrust of, and opposition to official protective and investigatory efforts.

b. A Desecrated Temple

A second controversial action taken by law enforcement during the raid involved the search of the FLDS temple and adjacent annex. Following observations made during the initial search, officers included language in the supplemental search warrant to examine, “multiple locked safes, locked desk drawers, locked vaults, as well as multiple computers and beds.”⁴⁴³ Community members grew distraught when law enforcement attempted to enter the giant limestone temple erected on the property, and local FLDS leader Merrill Jessop refused to unlock the temple doors and allow the building to be searched. Dozens of male adherents reportedly knelt in prayer around the building’s perimeter and wept as a tactical team finally breached the temples doors. Inside, officers indeed discovered beds suspected of being used in marriage ceremonies, as alleged in their second affidavit.⁴⁴⁴ In the adjacent annex, police discovered a trove of church records, including key evidence that would later be used to convict Warren Jeffs of sexual assault. Officers’ entry into the temple and annex were thus necessary to collect crucial evidence, but simultaneously viewed as a desecration of the community’s holiest

⁴⁴² Ibid., 13.

⁴⁴³ Long, “Affidavit for Search and Arrest Warrant No. M-08-002-S.”

⁴⁴⁴ Brooke Adams and Christopher Smart, “Week-Long Raid at FLDS Ranch Leaves Texas Authorities with Few Answers,” *The Salt Lake Tribune*, April 11, 2008.

site on the property, making it unusable as a place of worship.⁴⁴⁵ Obviously, the intermingling of evidence of criminal activity concealed among church records inside a sacred area presents an unfortunate tactical situation for law enforcement, and one that pits secular homeland security legal concerns against spiritual concerns of an opaque group.

9. Enforcement Success?

Consequent to this search and parallel to the investigation into abuse and neglect of FLDS children, the YFZ Ranch intervention did reveal additional evidence of criminal activity by church members and leadership. Based on evidence collected during the raid, a Texas grand jury indicted 12 male residents of the ranch, including Jeffs, charging them with sexual assault of a child, aggravated sexual assault, bigamy, evidence tampering, and failure to report abuse.⁴⁴⁶ Included among items discovered on the compound was an audio recording of Jeffs sexually assaulting a 12-year-old “spiritual bride” and essentially all of the evidence used to secure his aforementioned conviction in San Angelo.⁴⁴⁷ Whether this evidence could have been obtained without reliance on probable cause derived from a false report of domestic abuse and subsequent mass removal is unknown.

Collectively these convictions and resolved crimes do further vindicate authorities’ intervention into the opaque community residing at the YFZ Ranch under suspicion based on false pretense. However, because recovery of the substantiating evidence was not the premise for the search, this tangential enforcement success likely should not be used as a model or justification for subsequent interventions into closed groups. Ostensibly, officials correctly reasoned that the church might attempt to conceal ecclesiastical records regarding celestial marriages of FLDS members, particularly given that secular records of such illicit unions would constitute evidence of criminal acts. Obviously, officials’ strong desire to comprehensively search all structures on the compound was premised as a search for evidence of polygamist crimes, underage sexual

⁴⁴⁵ Evans, “The Past as Prologue,” 46.

⁴⁴⁶ Texas Department of Family and Protective Services, *Eldorado Investigation*, 15.

⁴⁴⁷ Whitehurst, “Warren Jeffs Gets Life in Prison for Sex with Underage Girls.”

abuse, and additional, as yet undetected criminal activity. However, as such records' very existence was a matter of mere speculation or conjecture prior to their discovery, and because likely no one outside of select members of the church's leadership had knowledge of them, this circumstance embodies one of the key challenges in dealing with an opaque community—particularly one that exploits a religious institution to retain its impenetrability. Indeed, it was only through the domino effect of officials' detection of tangential criminal activity at YFZ Ranch that enabled the extension of their search into what was clearly communal church property. Any future governmental interventions into opaque compounds cannot assume that such extenuating evidence will become available once the "walls are breached." And although it is unknown if such was the operational presumption of Texas officials, the apparent rush to accept the validity of Swinton's complaint as a means of entering the compound, as well as the nature of the tactics utilized, law enforcement may have hoped for, if not counted on, exactly such a fortuitous evidentiary "snowball effect."

C. THE FLAWED OPERATIONAL FRAMEWORK

The Eldorado raid was perhaps initially viewed as a successful, albeit massive state intervention into pervasive, institutionalized illegal activity shamelessly cloaked in the righteousness of religious devotion. However, following both the revelation that the Swinton/Jessop abuse report was a hoax and negative publicity of seeing busloads of crying children separated from their distraught parents, both the public and the courts began to raise fundamental questions regarding the legitimacy of the raid. After DFPS was unable to meet the burden of proof supporting emergency removal of the children, the Texas Third Court of Appeals vacated its order granting the agency temporary managing conservatorship of the children. An appeal to the Texas Supreme Court failed to overturn this decision, though the Court did dissent with regard to the cause for protection of pubescent girls. On June 2, 2008, the District Court ordered all the FLDS children be returned to their parents, and all impacted families were reunited by June 4. The Court did, however, leave other protective measures in the order intact, allowing

CPS to continue its investigation.⁴⁴⁸ DFPS would ultimately close cases on 424 of the 439 children at the ranch after parents signed “safety plans” agreeing to prevent and prohibit underage marriages, thereby ensuring they would not be subject to future abuse.⁴⁴⁹

1. A “Pervasive System of Belief”

Both the court decisions and behavior of FLDS female adherents during the intervention revealed flaws in Texas authorities’ presumptions regarding pervasive abuse and intending absconders. Although the court agreed that the five as yet minor girls who had become pregnant at the ranch required the state’s protection, it found no evidence that all children at the ranch were in imminent danger. The court noted that the only evidence DFPS had presented suggesting pubescent girls were in danger was the “pervasive system of belief” among FLDS adherents at the ranch that condones polygamous marriage and pregnancies among underage females. It furthermore wrote that,

The existence of the FLDS belief system...by itself, does not put children of FLDS parents in physical danger. [Rather] it is the imposition of certain alleged tenets of that belief system on specific individuals that may put them in physical danger.⁴⁵⁰

The now “liberated” FLDS women likewise confirmed they did not perceive themselves to be in an abusive or incarcerating environment. Having been initially allowed to accompany their children to the DFPS shelters, on April 14, 57 FLDS women were separated from the children aged five and older for whom they were caring, as is standard practice in cases of abuse. All were given the option to be transported to a domestic violence shelter. Six women were taken to shelters, but none opted to stay. An additional 47 mothers later separated from their children aged five and under were likewise offered transport to shelters on April 23, with seven initially choosing shelters

⁴⁴⁸ Texas Department of Family and Protective Services, *Eldorado Investigation*, 3–4.

⁴⁴⁹ *Ibid.*, 5.

⁴⁵⁰ *In re Steed*, Fastcase, Court of Appeals of Texas, Third District, Austin, 2008, 9.

before voluntarily returning to the ranch.⁴⁵¹ Collectively, these actions indicate that contrary to officials' operating assumptions, neither systemic child nor spousal abuse was being committed at the ranch. Indeed, even if the atmosphere of the YFZ Ranch was filled with a toxic "pervasive belief system," which promoted marital and child rearing practices repugnant to most outsiders, the actions of the removed FLDS women and children while under their own volition indicated that any victimhood they might be experiencing was more widely suffered outside than within the confines of the FLDS compound.

With regard to the legal justification for such actions, in its finding for Santosky vs. Kramer,⁴⁵² the Supreme Court has defined current burden of proof requirements for states to initiate child removal processes by the "clear and convincing" standard. This requirement places an even greater burden on states than the traditional "preponderance of the evidence" civil standard, creating an enhanced evidentiary challenge for state agencies that is further exacerbated when dealing with the already problematic situational awareness and victim/witness cooperative environments presented by opaque communities. These hurdles are even further raised in the case of religious, communal enclaves such as FLDS in which potentially abusive behavior is intermingled with constitutionally protected religious beliefs, civil rights and privacy freedoms, and alternative lifestyle domestic arrangements that challenge the definition of family makeup and structure.

2. Competing Legal Parameters

With regard to opaque groups, the crucial determinant is whether and to what degree the government can show evidence of abuse, regardless of the ideology or religious beliefs of the suspected offenders. Ross defends the decision of the Texas court system that the Fourth Amendment required "individualized suspicion of each parent" rather than generalized suspicion of the customary and pervasive beliefs and actions of an

⁴⁵¹ Texas Department of Family and Protective Services, *Eldorado Investigation*, 7–8.

⁴⁵² Santosky v. Kramer, U.S. Supreme Court 1982.

entire community before removal proceedings can be initiated.⁴⁵³ She further states, “mass child protection efforts, like all attempts at mass justice, violate the basic requirement of individualized fault and tend to rely on stereotypes rather than evidence and analysis.”⁴⁵⁴ Ross proposes that child protective services might have determined such individualized fault using the existing tools at its disposal, including home visits and oversight, parental education, and counseling, though she does not explore the degree to which such actions themselves can be compelled without demonstrable suspicion of abuse.⁴⁵⁵ She suggests that public schools act as an “early warning system of child abuse” and that by compelling children from opaque groups such as the FLDS to attend classes off the ranch, officials could monitor them for signs of mistreatment or duress.⁴⁵⁶

Suggestions for such targeted, involuntary, and potentially prejudicial treatment of the FLDS children aside, it is quite possible that compulsory public school attendance would be fruitless for situational awareness purposes, as well-indoctrinated FLDS children—similar to their parents—would likely eschew outside intrusion by gentile teachers and administrators who, as they might be told, were only looking to wrest them from their families. Forcing FLDS children to attend public school in jurisdictions that allow home schooling could be expected to create controversy, accusations of official prejudice targeting a religious group, and potential lawsuits. Aside from this suggestion, what is lacking from Ross’s own analysis is suggested constructive methods or inroads by which homeland security stakeholders can be reasonably expected to develop such individualized and nuanced suspicion, evidence, and analysis. A question then emerges as to whether governmental interests in child protection allow for compelled “exposure” of closed communities through such quasi-prejudicial yet unproven monitoring efforts.

In response to exactly such pervasive challenges, Nilson argues in a revisionist legal note, “a parent’s religious beliefs can be evidence of physical abuse and thus a

⁴⁵³ Ross, “Legal Constraints on Child-Saving,” 399.

⁴⁵⁴ *Ibid.*, 409.

⁴⁵⁵ *Ibid.*, 405.

⁴⁵⁶ *Ibid.*, 408.

danger to a child's safety, prompting the need for removal."⁴⁵⁷ She maintains that constitutional protections under the First and Fourteenth Amendment are not absolute and can be considered in custody determinations, particularly when religious beliefs themselves are deemed abusive. Furthermore, Nilson argues that because enclaves such as the YFZ Ranch, "can be analogized to a family for the purpose of removal in that it is a closed community that resembles a household," and because abuse of one child within a family is grounds for removal of other children, removal actions such as those taken by Texas authorities should be deemed permissible.⁴⁵⁸ Most importantly, noting that as

the current evidentiary standard leaves the child's interest to remain free from abuse not as protected as the parent's interest in custody of his or her child...further protection is required and can be achieved by lowering the standard of proof (from 'clear and convincing' to 'preponderance of the evidence').⁴⁵⁹

Although an examination of the validity of such legal assertions is beyond the scope of this study, it is worth noting that it is precisely the legal frustrations borne by official interactions with opaque communities such as the FLDS that generate proposals to amend these fundamental and time-honored protections for families and the societal ascendancy of parental rights.

3. The Problem of Proving Bigamy

Aside from these mass raids, the use of bigamy laws to target consenting adult polygamists has not been frequently exercised. A central problem to enforcement efforts is that religious polygamists practice a form of marriage that does not technically break the law. Because the government does not regulate "spiritual" marriages and first wives are the only legally binding marriages entered into by adherents, there exists little legal grounds to pursue what is essentially a voluntary cohabitation arrangement.⁴⁶⁰ In Canada, official legal opinions suggested that in the case of FLDS communities there, plural

⁴⁵⁷ Nilson, "Yearning for Zion Ranch Raid," 307.

⁴⁵⁸ Ibid., 332.

⁴⁵⁹ Ibid., 308.

⁴⁶⁰ Evans, "The Past as Prologue," 47.

marriages would likely even be deemed outright permissible according to freedom of religion constitutional guarantees.⁴⁶¹ Recently, and likely for this very reason, Utah and Arizona have instead prioritized investigation of domestic violence, child abuse, and fraud allegations in polygamous communities such as Short Creek.⁴⁶² By focusing on these verifiable crimes with victims who view themselves as such, authorities have a far greater likelihood of both achieving successful prosecutions and establishing sound legal inroads into the detection of additional criminal activity within opaque communities.

4. Misinformed Presumptions versus Situational Intelligence

The YFZ Ranch's status as an opaque enclave created operational challenges that necessitated authorities search for alternative sources of information on the group. As with the case of the Branch Davidians, Texas authorities found a ready supply of such information among anti-cult experts, apostates, and alleged subject matter experts. However, over reliance on intimate knowledge of the group from departed former members likely colored investigators' objectivity toward the community and engendered a negative assessment bias, particularly in the lead up to the raid when investigators are pressured to locate immediate sources of corroborating evidence for complaint affidavits. In an unfortunate case of self-confirming, circular reporting, Flora Jessop, the anti-FLDS activist who had voluntarily contacted Schleicher County back in 2004 to provide assistance, had herself spoken with and directly recorded 30–40 hours of calls from Swinton/Jessop.⁴⁶³ Flora prompted Swinton to contact Texas authorities, reported the contact herself, and voluntarily provided tapes of the recorded conversations to the Texas Rangers. In doing so, Texas officials viewed Flora Jessop's involvement as lending credibility to Swinton/Jessop's sensational tale of abuse. Jessop, an apostate and subject matter expert, validated the authenticity of Swinton's claims to be a FLDS member and provided her professional assessment of the circumstances through her work with Help

⁴⁶¹ MacQueen, "The Battle for Bountiful," 4.

⁴⁶² Utah Attorney General's Office, Arizona Attorney General's Office, and Family Support Center, *The Primer*, 8.

⁴⁶³ Wright, "Deconstructing Official Rationales for the Texas State Raid on the FLDS," 128.

the Child Brides—an organization founded by Flora to assist underage FLDS victims of forced polygamist marriages.⁴⁶⁴

Though the voluntary assistance provided by such activists is understandably welcomed in the situational awareness void blanketing closed groups, authorities are often unaware of the extreme prejudices and competing agendas of such actors. Activists, apostates, and former adherents such as Jessop or, in the case of the Branch Davidians, Marc Breault harbor intimate, highly visceral motivations when acting against the very groups to which they were previously devoted. The very fact that such actors dedicate great amounts of time and effort to revealing atrocity tales and assisting attempts to expose crimes perpetrated by the targeted groups—in Jessop’s case, it has become her profession and life’s work—indicate their utter devotion to their cause. Having themselves escaped the now perceived pernicious influence of the organization, such activists likely feel uniquely suited to assist others in realizing the falsehood of the group’s ideology and exiting the its social control.

Because such activists may see law enforcement as a means of seeking revenge against their former tormentors within the group, they may be inclined to provide sensationalized accounts of deviant behavior by the group or make unfounded claims of criminal activity in an attempt to motivate enforcement actions by officials. However, unlike homeland security officials, such activists are neither bound by laws and departmental policies nor do they answer to governmental structure or constituents. As such, and as in the case of the YFZ Ranch raid, if the basis for governmental intervention prompted in part by organizational opponent activism goes awry, these actors do not face the professional liabilities and consequences that official stakeholders must confront. The magnitude of Flora Jessop’s failure to ferret out Swinton as an imposter given Flora’s intimate, insider knowledge of the FLDS and the extent of time that they conversed suggests Flora may herself have been unable to objectively assess Swinton’s allegations. Whether this was unintentionally due to her emotional attachment to her work and desire to assist intending absconders or because she consciously viewed Swinton’s allegations

⁴⁶⁴ Ibid., 129.

as a viable premise by which to enlist law enforcement assistance to intervene at the ranch is unknown. Regardless of the reason, law enforcement's use of expertise and assessments from anti-cult activists and apostates with potentially competing agendas must be taken with a degree of circumspection.

Additional indications of Texas' authorities rush to intervene into the YFZ Ranch were evident in official statement made following revelations that the Swinton's call was a hoax and admissions that the premise for entering the FLDS compound was based on false information. Stephanie Goodman, chief spokesperson for Texas' social service agencies, noted to reporters that the calls were "not central" to the case and that although, "calls got us to the gates, it's not what caused us to remove the children." After Texas courts overturned the mass detention, Goodman would claim, "I cannot help but believe that we changed the culture there." DFPS spokesman Patrick Crimmins would also later defend his agency, suggesting, "We wanted to find out if those children had been abused and neglected and do whatever we needed to do protect them from being harmed in the future."⁴⁶⁵ Such statements indicate, both an organizational presumption that FLDS members were routinely and categorically engaging in abusive behavior as well as an official agenda to seek interventionist measures regardless of the sound legal basis for doing so.

5. The Opacity Factor

It would appear that in addition to officials' distaste for FLDS practices and beliefs, the opaque nature of the enclave led to an official presumption of the existence of pervasive and widespread criminal activity on the ranch. Though the incidence of known polygamist activity by FLDS members, historical cases of compelled placement marriages of underage females, and potential for sexual abuse under Jeffs's tenure as church president was well established, the potential to determine if such crimes were being perpetrated on the Eldorado compound were limited. Given that YFZ Ranch was a walled, patrolled compound, lack of criminal complaints reported by underage victimized brides and limited evidence of child abuse could as easily be explained by officials as

⁴⁶⁵ Wright and Richardson, "Introduction,"6.

FLDS control over and imprisonment of intending absconders, victims, and witnesses as it could be attributed to lack of incidence of such violations. In the absence of regular contact and communication with FLDS community members, Texas officials were left to assume and plan for the worst conceivable scenarios, some of which had already been manifested by the groups' leader and prophet Jeffs. It would appear that the community's opacity so thoroughly troubled stakeholders that any premise under which to validate their suspicions, including giving wide latitude to the credibility of sensational claims of an unidentified alleged victim, was quickly embraced as an expedient to investigate what all parties were relatively certain would be much more flagrant crimes taking place on the compound.

With regard to the perceived threat emanating from the YFZ Ranch, the nature of Texas's authorities tactical response also indicates a presumption of a much greater threat than was evident on the compound. Included among the raid team that executed the Eldorado search warrant were Texas Rangers, personnel from four county sheriff's offices, officers from the San Angelo Police Department, and Texas Game Wardens. Though Texas DPS would not disclose the number of personnel taking part, media reported that over 1,000 personnel from these and other agencies were deployed. Impacted FLDS members reported that police stationed snipers around the compound perimeter and officers wearing paramilitary tactical gear and riding in tracked armored vehicles were visible during the initial search.⁴⁶⁶

The size and militancy of authorities' show of force is notable given that FLDS had never shown a propensity for violence during previous raids. Though law enforcement normally only elects raid tactics in those extreme cases where there is imminent threat to law enforcement or clear indications of potential armed resistance, the show of force displayed by Texas authorities was obviously grossly disproportionate to effect an arrest of a single subject based the suspected domestic assault charge for which the warrant was issued.⁴⁶⁷ The fact that authorities were aware that a large number of women and children were present at the ranch seems likewise incongruous with the

⁴⁶⁶ Ibid., 7.

⁴⁶⁷ Ibid., 16.

perceived need for a tactical entry utilizing tracked vehicles and snipers. It would seem much more likely that authorities utilized these extreme precautions based primarily on the dearth of situational awareness regarding the potential for FLDS members to defend the compound and the estimated size or makeup of any potential defensive force. Moreover, as officials had established that the compound was fenced, rumored to have sentries, and its main entrance gate guarded by what was described as a guard tower or surveillance and communications platform that overlooked the single point of approach, police were understandably suspicious that the YFZ Ranch was designed with tactical defensive advantage in mind. In the absence of information that could allay officials' fears that community members might violently resist a police incursion into their purposely opaque and secretive compound, police were left to "prepare for the worst" and elect tactics that corresponded with their most disastrous estimates regarding how the warrant execution would proceed.

Note that although the FLDS members have themselves never resorted to violence, a separate Mormon fundamentalist community was plagued by a string of violent struggles for church succession in the 1970s and 1980s. The Church of the Firstborn in the Fullness of Times, aka Church of the Lamb of God was a Fundamentalist Mormon community founded by the LeBaron brothers that split from the mainline LDS church and settled in Chihuahua, Mexico in 1945. This millenarian group claimed approximately 500 members in Mexico and Utah. Core tenets of the group included a belief that the United States would experience Armageddon in 2010. Following a dispute between brothers Joel and Ervil over Joel's vow to reestablish plural marriage, Joel excommunicated Ervil for being unstable. In response, in 1972, Ervil arranged to have Joel murdered. This act was followed by additional murders, directed by Ervil, against those who questioned his subsequent divine "revelations." Violence was then directed against Rulon Allred in 1977, himself the leader of a fundamentalist sect perceived to be competing with the LeBarons. Allred's murder was followed by a string of assassinations in the 1980s, after which the LeBaron group splintered. Though some adherents continue to live in Mexico and follow Joel LeBaron's teachings, little is known about the

leadership or nature of this remnant.⁴⁶⁸ The internal dynamics and historical context surrounding this group are by no means directly related to the collective set of current circumstances present in the FLDS. However, the LeBaron group does offer historical precedence of how, when faced with the contested succession of an allegedly divinely inspired fundamentalist leader within a group espousing apocalyptic eschatology, an opaque group can resort to violent tactics as a perceived legitimate means of dispute resolution. It is unknown, however, if this historical precedent contributed to Texas authorities chosen enforcement posture.

D. THE YFZ RANCH RAID LEGACY

Aside from critiques of the flawed premise for law enforcement's intervention into the YFZ Ranch and subsequent metastasized investigative focus, questions remain regarding whether the results of the Eldorado raid justify the collective monetary, social, and public trust costs. The raid may also have negatively affected any future outreach efforts with the FLDS church and its members. Examining what opportunities for dialogue did exist and exploring potential alternative outcomes to the intervention offers homeland security stakeholder potential lessons for avoiding future costly and unnecessary governmental raids.

1. Costs/Benefit Ratio

The monetary costs for this raid were significant. According to DFPS figures, official estimates for expenditures related to the "San Angelo Mass Care Event" totaled \$12,436,310.⁴⁶⁹ Among these costs was \$4.2 million for goods and services, including over \$955,000 for shelter and food and \$1.065 million for bus transportation alone.⁴⁷⁰ Texas spent \$3.3 million on foster care placement and supporting services.⁴⁷¹ Considering this money resulted in the detection of only 12 confirmed victims of sexual

⁴⁶⁸ Utah Attorney General's Office, Arizona Attorney General's Office, and Family Support Center, *The Primer*, 15.

⁴⁶⁹ Texas Department of Family and Protective Services, *Eldorado Investigation*, 21.

⁴⁷⁰ *Ibid.*, 20.

⁴⁷¹ *Ibid.*, 21.

abuse through underage marriage and the return of all but one child from foster care to their families at the ranch, from a purely budgetary standpoint, the raid would appear to be a wasteful use of taxpayer funds. In addition, although searches subsequent to the raid did result in 12 indictments and the lifelong incarceration of Warren Jeffs, the evidence needed to convict these criminals could have been obtained without the mass removal and detention of an entire community's children under chaotic circumstances.

In addition to the costs and threats of civil litigation, the YFZ Ranch raid failed to achieve either the tacit or implied goals of Texas authorities. As Sarah Jessop was a figment of Swinton's imagination, she was obviously not liberated from her equally fictitious abusive husband. The mass child removals and expected liberation of spiritual wives ostensibly being held against their will also did not occur, as the majority of FLDS wives and minors apparently wanted nothing more than to reunite with their husbands and families and be left in peace, as indicated by their rejection of offers to be transported to domestic abuse shelters. Though such aberrant behavior is arguably prevalent throughout cases of domestic violence, the fact that not one of the "liberated" FLDS women chose to remain in an abuse shelter would seem to indicate that the incidence of battered females or those confined in involuntary unions was not the community-wide phenomenon Texas authorities initially expected to discover. The sweeping and expensive collection of DNA evidence, though certainly useful in determining parentage, was used as the primary source of evidence in only one sexual assault case against Raymond M. Jessop. It should be noted that DNA evidence is equally ineffective as evidence for proving polygamy, as the existence of extra-marital children does not itself prove plural marriage.⁴⁷² Texas officials' efforts at "changing the culture" and "protect[ing] them from being harmed" likewise failed, as the raids were generally neither effective at investigating or prosecuting the alleged crimes of bigamy nor did they curtail the community's continued support for polygamist activity against which it was conceived.⁴⁷³

⁴⁷² Lalasz and Gonzales, "Large-Scale FLDS Raids: The Dangers and Appeal of Crime Control Theater, 191.

⁴⁷³ Ibid., 194.

2. Potential Future Impact

Conversely, the raids may well have further isolated an already opaque group and confirmed church leadership's admonitions regarding religious persecution and governmental desires to separate FLDS children from their families, thereby strengthening their control over adherents by bolstering their purported prophetic status. The mass separations likely had the unintended consequence of causing psychological and emotional harm to the very victims officials sought to protect. This resulted in members feeling the sanctity of their homes had been violated and their children had been separated in an illegal and prejudicial manner, with possible negative repercussions to the children's collective emotional well-being and attachment bonds.⁴⁷⁴ Because the personal impact that removal of the children had on YFZ Ranch families was ultimately determined by the courts to be an invalid imposition of governmental control into adherents' personal sphere, the raid only confirmed and intensified FLDS members' collective inherent distrust of public agencies, law enforcement, and social service officials. In thereby decreasing the prospects for future cooperation with officials and increasing the probability that FLDS members will continue to break the law, the raid may have had the unintended consequence of making it actually more difficult to protect FLDS members from future criminal acts.⁴⁷⁵

Looking 55 years back into their own church history and contextualizing the ordeal in an unbroken dialectic of tribulations shared by their ancestors, the event also stands as yet another manifestation of religious persecution by the state—one the church likely views as having been successfully sustained due to divine protection of their morally superior cause. The fact that courts had repeatedly invalidated removal orders, dismissed state cases, and overturned prosecutions from both previous interventions and the YFZ Ranch enforcement action could be construed as evidence of a pattern of governmental (Babylonian) overreach and attempted official misappropriation of legal processes by bigoted, nonbeliever (Gentile) authorities. FLDS adherents and leaders

⁴⁷⁴ Wright and Richardson, "Introduction," 14; Lalasz and Gonzales, "Large-Scale FLDS Raids: The Dangers and Appeal of Crime Control Theater," 193.

⁴⁷⁵ Lalasz and Gonzales, "Large-Scale FLDS Raids: The Dangers and Appeal of Crime Control Theater," 193, 195.

interpreted the raid as a collective test of faith, and members could draw inspiration from the biblical examples of martyrs, saints, and prophets who had themselves withstood greater forms of persecution and torment. Accordingly, the raid may have only further reinvigorated the FLDS community's distrust of foreign intervention, making it both more opaque and strengthening its collective resistance to external opposition.⁴⁷⁶

In terms of validating the state's interest in protecting YFZ Ranch children from abuse and neglect, the Texas District Court held that FLDS families could be compelled to attend parenting classes, cooperate with investigative efforts, and provide CPS workers access to their residences from 8 a.m. to 8 p.m. to conduct unannounced home visits.⁴⁷⁷ With regard to this last order in particular, the court apparently confirmed that the availability of situational awareness and visibility over the domestic circumstances of opaque community members constitutes a defensible state interest. A similar 1992 mass raid by Australian authorities of The Children of God/The Family International communes in Sydney and Melbourne, during which 130 children were forcibly removed from their families, resulted in a similar ruling. One week after the raid, the presiding magistrate ordered the release of all children from state custody under the condition that they "be allowed regular supervisory visits...to monitor their health and whereabouts."⁴⁷⁸ The question then arises as to how homeland security agencies and governmental stakeholders might reasonably argue for and obtain similar judicial orders, based on protection of children or other homeland security imperatives, to allow them to penetrate the opacity of such groups as the FLDS in the future. In particular, officials will be challenged to advocate for judicial support for such additional authority and access into the private sphere of closed groups in a manner that is reasonable, politically viable, sustainable by normal operations, and free from public perceptions of governmental bias, prejudice, or infringement of privacy and civil rights. How and under what circumstances Texas officials might have obtained the necessary evidence to fulfill a legal burden of

⁴⁷⁶ Evans, "The Past as Prologue," 47–48.

⁴⁷⁷ The Texas Department of Family and Protective Services, *Eldorado Investigation*, 9.

⁴⁷⁸ Susan J. Palmer, "Rescuing Children?," in *Saints under Siege: The Texas State Raid on the Fundamentalist Latter Day Saints*, ed. Stuart A Wright and James T. Richardson (New York and London: New York University Press, 2011), 62.

proof in order to gain such expanded access and oversight over a purposely closed group remains a wicked problem inherent to the opaque community phenomenon.

3. The Opportunity for Dialogue

Throughout the varying levels of governmental interaction with the inhabitants of the YFZ Ranch, the need to deal directly with FLDS leadership and dangers of seeking alternative sources of information about activities occurring within the compound became evident. FLDS adherents are indoctrinated to show deference and respect to a patriarchal, authoritarian interpretation of social order. Corresponding adherence to church hierarchy is then enforced through the prophet's control over dispensation of means of salvation through celestial marriage and priesthood status and the corresponding marital and familial bonds thereupon predicated. As church members are also commonly both financially and professionally vested in church enterprises and even reside in FLDS-owned or -administered properties, the motivations to remain loyal to the church leadership who control this microcosmic society are significant. The fact that a twice-convicted megalomaniac sat atop this hierarchy created massive challenges for any homeland security official attempting to establish a constructive dialogue with the group.

The pervasive nature of Jeffs's social control apparatus thus created additional religious and psychological hurdles to community-police cooperative efforts. Unfortunately, any effort to compel Jeffs to comply with legal prohibitions that conflict with his professed religious imperatives had the potential to be categorized by Jeffs, and thus viewed by the FLDS faithful, as religious persecution. In categorizing governmental enforcement efforts, indictments, prosecutions, and his eventual incarceration as Babylonian oppression and by framing his personal crimes and resulting legal misery as a shared religious "test of faith," Jeffs effectively demonized officials who were attempting to act in the greater FLDS community's best interests. In such a situation, it would be imperative that homeland security officials clearly communicate the legal basis and operational necessity for their actions to impacted adherents, thereby offering their own counter-narrative and refutation against their criminal leader's mala fide contentions. While such a strategy may ultimately prove unsuccessful, officials must at least

endeavor to show their actions are not purposely prejudicial against an entire class or group of followers. Though it is unknown whether or to what extent Texas officials embraced such a communication strategy with YFZ Ranch leadership prior to or during the intervention, the early outreach efforts of Sheriff Doran would appear to constitute this very type of proactive official information campaign.

4. Potential Alternative Outcomes

The full depth and breadth of official efforts at all levels of the Schleicher County and Texas governments to obtain ongoing situational awareness on the activities at YFZ Ranch are unknown. Regardless of those actions embraced prior to the raid, however, there would have been ample opportunities for regulatory and legal contact with and oversight over the group. Numerous county agencies and departments had legitimate interests in the ongoing construction and improvements being made on the property. County tax assessors and building inspectors would have frequent cause to inspect the multi-family dwellings under construction for taxation and code compliance. Fire inspectors would likewise have legitimate reason and legal cause to assess the temple and other large buildings to estimate safe carrying capacity and fire abatement efforts. Audits conducted to ensure home schooling waivers were on file, curriculum, and educational development was acceptable, and any mandatory vaccinations were up to date could also have been arranged. Routine wastewater inspections, well and water use compliance, rural fire department stipulations, and other health and safety issues could have been leveraged to gain access to the closed confines of the ranch. In short, in situations in which there exists a situational awareness need regarding an intentionally opaque commune, any compelled interaction with governmental agencies or process could constitute a source of critical information.

Obviously, there exists the danger that use of such techniques could be perceived to be prejudicial or targeted use of municipal and county inspection and regulatory authorities to monitor a private group. To the extent these activities are being routinely and legally executed by the responsible parties, however, law enforcement, fire, health, emergency management, and other homeland security entities arguably have a legitimate

interest in participating in visits to inspect or audit such communes. Reasons for participation by law enforcement and other stakeholders could include a regulatory agency's request for police escort, first responder familiarization with the commune's layout and infrastructure in the event a response is needed or combined agency community outreach. Alternatively, stakeholder agencies could seek to debrief and exploit official sources of situational awareness from governmental assets with whom they may not normally interact. Rather than rushing to accept the veracity of spurious abuse complaints to gain access to the ranch, officials could have leveraged such visits and sources of information to develop the same "plain sight" probable cause indicating criminal activity that ultimately served as the legitimate basis for the YFZ Ranch search. It is unknown if or to what extent such efforts to obtain tangentially obtained information were pursued prior to the YFZ Ranch raid.

Finally, in the event the YFZ Ranch had continued to maintain its opacity to facilitate suspected illicit behavior, it appears civil actions may have been available to homeland security stakeholders as a viable recourse. Rather than target FLDS for polygamist crimes, sexual abuse, and other illegal activity known to be pervasive in the community yet only suspected, not established, to having been or being committed by specific individual members with the complicity of church leadership, other states have targeted FLDS opaque enclaves through civil process. In June 2012, the Assistant U.S. Attorney in Arizona filed a federal civil lawsuit against the municipalities of Colorado City, Arizona and Hildale, Utah, as well as two utilities that serve the twin cities, alleging they, "engaged in and continue to engage in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution and the laws of the United States."⁴⁷⁹ The suit alleged that these entities illegally discriminated against individuals who were not themselves FLDS members, utilizing official offices and services to enforce and act in concert with the will of church leadership. In March 2014, a federal jury decided for the plaintiff, demonstrating that such actions can prove successful, even

⁴⁷⁹ U.S. Department of Justice, *U.S. vs. Town of Colorado City, Arizona; City of Hildale, Utah; Twin City Power; and Twin City Water Authority, Inc.*, 2 (n.d.).

when potential criminal evidence is tightly compartmented by or involves conspiratorial behavior within an opaque group.⁴⁸⁰ Although the YFZ Ranch did not include non-members among its inhabitants, similar suits targeting UEP-controlled business practices, use of child labor, failure by the church to relinquish apostates' finances and property, and other potential government filed torts constitute a separate means of judicial relief to impacted jurisdictions and surrounding communities.

Eventually, civil process was successfully utilized with regard to the ranch as well, though portions of the derogatory evidence utilized in this suit were obtained during the 2008 raid. Ultimately, the YFZ Ranch itself would be forfeited in April 2014 under a 2012 civil suit filed by the Texas Attorney General's Office alleging the property was purchased using funds derived through illegal activity. The majority of the residents had already departed the compound, and neither the United Order of Texas—the ownership vehicle of the ranch—nor FLDS controlling members fought the case.⁴⁸¹ Admittedly, the use of these federal and state civil cases to counter suspected FLDS activities likely created a contentious atmosphere between government officials and church leadership. As such, it would seem advisable that use of civil process should be limited to those instances in which no other means of obtaining situational awareness or official interaction with the group are available.

In the final analysis, despite the enforcement and prosecutorial successes achieved by Texas law enforcement, critics can argue the premise for the 2008 YFZ Ranch raid was flawed and that officials made numerous significant tactical and legal missteps during the intervention. Looking back at both the YFZ Ranch and Short Creek raids, Evans in fact suggests that officials, frustrated at their inability to combat polygamy crimes, appear to have “substituted the claims of child abuse for the morally offensive practice of plural marriage.”⁴⁸² However, given the lack of situational awareness information available to homeland security stakeholders before and during the raid, the

⁴⁸⁰ Nate Carlisle, “After Big Lawsuit, Family Gets Water from Polygamous Town,” *The Salt Lake Tribune*, May 14, 2014.

⁴⁸¹ Jennifer Rios, “Last Residents Leaving YFZ Ranch,” *San Angelo Standard Times*, April 17, 2014, <http://www.gosanangelo.com/news/2014/apr/17/last-residents-leaving-yfz-ranch/>

⁴⁸² Evans, “The Past as Prologue,” 47.

size and makeup of the FLDS diaspora, the conspiratorial and uncooperative nature of many of the ranch's inhabitants, and the pervasive, organizationally enforced opacity of the community, officials cannot be universally censured for some of these errors. It appears that homeland security stakeholders and government officials approached the FLDS presence at the YFZ Ranch using an operational framework that presumed the existence of illicit behavior, widespread abuse of women and children, the presence of intending absconders, and the potential emergence of numerous unknown additional threats emanating from the compound. This framework prompted officials to treat FLDS members collectively rather than individually for the purposes of intervention and investigation.

Although the raid did result in the prosecution of multiple subjects, including the despotic leader of the group, for numerous crimes that were apparently institutionalized and condoned by the church, it also exacted significant costs in terms of taxpayer funds, likely emotional and psychological damage to innocent women and children, and loss of public trust and confidence. Had homeland security stakeholders adopted an alternative framework and approached the YFZ Ranch using a more objective operational perspective, perhaps a more targeted investigative and enforcement approach could have been formulated. Alternatively, had officials established and maintained regular and recurring communication with group leaders through various forms of voluntary and compelled interaction with governmental entities, they might have been better able to resolve criminal allegations, satisfy both official and public demands for situational awareness, ensure any potential intending absconders or abuse victims had access to governmental services and protection, and provide for the safety and welfare of all YFZ Ranch residents.

VII. FINDINGS, RECOMMENDATIONS, AND CONCLUSION

“If we are not ingenious enough to out smart the most radical and violent among us, then their disorder will replace our order, their lawlessness will replace our law, and their irrationality will replace our rationality.”

—Commissioner Charles W. Bowser, Esq.
Philadelphia Special Investigation Commission
March 6, 1986

A. FINDINGS

Collectively, these three cases demonstrate that homeland security practitioners exhibit a tendency to employ an oppositional framework when approaching opaque communities within their jurisdiction. Regardless of government actors’ understanding of a given opaque community’s ideology, makeup, capabilities, intentions, and any therewith associated actual or potential danger, the closed and unknowable nature of the group appears to have led to reactive decision making that exacerbated the negative trajectory of the government/community relationship. In all three cases, officials’ lack of situational awareness regarding a socially closed group appears to have generated a pervasive governmental perception of threat. Various coalitions comprised of concerned citizens from the surrounding impacted community, opaque community absconders and apostates, anti-cult and counter-group activists, and the media—each armed with their unique, often subjective agendas—emerged to foment opposition to the collectively reviled or misunderstood group. These coalitions then amplified stakeholders’ collective perceived threat by airing grievances, circulating atrocity tales, providing agenda-driven “expert” assessments, and actively soliciting various governmental entities to undertake enforcement or interventionist measures.

1. Key Evidence

In all three cases studied, homeland security stakeholders’ professed ultimate concerns and motives for interventions into opaque communities were eventually eclipsed by cascading elevations in tactical posture towards and defensive responses by the targeted group. It is noteworthy that in each case, the cited basis for the initial

incursion was repeatedly dismissed by tactical commanders or quickly played a secondary or tertiary role in deliberations regarding the escalation of force or justifiable degree of intrusion into the community. Warrants being served on members of MOVE were forgotten as frustrated police endeavored to breach a fortified row house, dislodge a parapet, and compel the surrender of occupants—including innocent associates authorities previously sought to protect—at all costs. An investigation and warrant search targeting potential illicit weapon modification violations by a small number of Branch Davidians was quickly overshadowed by what was later determined to be legitimate communal defense of imminent domain against unreasonable and excessive governmental use of force. A heavy-handed inquiry into a dubious domestic abuse complaint led to a mass child removal operation, desecration of a temple, and seizure of secret church records unrelated to the initial criminal allegation. In each case, concerns for the safety and welfare of innocent “victims” of targeted opaque community members were universally abandoned in the rush to intervene into the closed group and force submission to governmental sovereignty, regardless of the perceived legality or reasonability of selected use of force tactics.

It is clear that in each of the examined cases, the previously identified influences emerged and were influential in both creating and calcifying homeland security stakeholder oppositional frameworks. In each instance, community and political pressure to intervene in the private activities of opaque communities increased due to: presumption of intending absconders (Branch Davidians and FLDS); projected, unfounded concern for women and children members (all cases); and suspected activities that offended the prevailing social conscience or prefaced illegality (all cases). All case studies revealed an emergence among homeland security officials of a pervasive, perceived threat emanating from the opaque community due to the unavailability of situational awareness information and intelligence. These circumstances led stakeholders to elect unreasonable and largely unnecessary tactical response measures and to pursue escalation of use of force continuums in the absence of reliable means of estimating threat or assessing potential dangers to officer safety. Finally, officials’ rejection of alternative means of dispute resolution, including a repeated failure to pursue or exhaust

targeted negotiations, and obvious preference for tactical incursions despite associated risks to the lives and welfare of innocent community members substantiated the apocalyptic narratives professed by the leadership of all three groups. This in turn created a self-fulfilling catastrophic trajectory in which homeland security officials often played a pre-scripted role, further preventing the establishment of the constructive dialogue or inter-organizational trust relationships necessary for productive negotiation under situations of extreme duress.

2. Common Aggravating Factors

Perhaps more striking is the degree to which homeland security practitioners eschewed available alternative methods of dealing with suspected infractions committed by individual opaque community members. Authorities instead appear to have repeatedly attributed member's individual crimes and isolated instances of illicit behavior to the entire community, creating self-imposed barriers to viable alternative investigative and enforcement options. In the case of MOVE, Philadelphia Police had multiple opportunities to both arrest fugitives away from their barricaded residence and to separate non-complicit women and children members from those being sought. Federal authorities could have more earnestly attempted to lure Koresh, Fatta, Schroeder, and others actually suspected of being involved in illegally modifying weapons to the Mag Bag or other location away from the Davidian compound. This likewise would have separated these suspects from Koresh's innocent adherents, restricting governmental use of "dynamic entry" tactics to those against whom such show of force was reasonable and justified. Finally, Texas authorities could have taken numerous measures both to corroborate details from Jessop's complaint prior to entering the YFZ Ranch and pursue a warrant search of church records for evidence of child abuse and underage marriage absent indiscriminate and arbitrary child protective investigations into an entire community. It is thus not the presence of suspected criminal behavior among *certain* individual opaque community members but rather officials' failure to select reasonable investigative techniques using the least intrusive methods or having the least impact on innocent bystanders from the *greater* and *non-complicit* opaque community population that seems to have been most negatively affected by said officials' lack of situational awareness.

The given opaque community's failure to either offer a conduit for establishing dialogue with the group, advance a counter narrative to opposition groups, or themselves otherwise unilaterally and proactively address allegations and grievances only allowed stakeholders' perceptions of latent threat to fester. In the absence of an available viable spokesperson to refute unfounded allegations (FLDS), an ability to translate and defend the group's concerns in secular terms (Branch Davidians), or the offer of a conciliatory dialogue with its opponents (MOVE), these oppositional coalitions coalesced into self-corroborating echo chambers. Officials, at this point often bowing to significant political pressure to intervene and sensing their oppositional framework validated in the absence of disconfirming evidence, developed operational myopia. Ultimately, stakeholder agencies then embraced expedient investigative and enforcement inroads, ignoring readily available sources of intelligence or alternate paths to dispute resolution. In the cases studied, these efforts culminated in authorities' selection of disproportionately heavy-handed enforcement posture and tactical missteps. Now facing an inability to effectively resolve their differences in a situation of heightened emotion under duress, parties on both side of each altercation incurred exorbitant human and financial tolls.

3. Opaque Community Perspectives

Prior to examining potential solutions to this phenomenon, it is useful to view homeland security stakeholders' oppositional framework from the impacted opaque community's vantage point. Both the Branch Davidians and MOVE perceived governmental intervention into their communities as illegitimate, likely in part due to governmental failure to establish constructive ongoing dialogue with either group. In particular, the Branch Davidians viewed a preemptive federal raid as premature and unnecessary given Koresh's repeated conciliatory overtures, leading them to contextualize government-perpetrated violence against an otherwise peaceful religious community as a manifestation of their charismatic leader's millenarian narrative. MOVE apparently mistakenly believed it could, via repeated public proclamation, simply withdraw from the legal and social rules and constraints of the society in which members lived. In doing so, the group embraced antagonistic and inflammatory rhetoric to air its grievances and test the bounds of governmental will to respond. MOVE thus likely

perceived Philadelphia officials to be tolerating its incremental community intimidation campaign, viewing subsequent large-scale police interventions as purposely antagonistic bait and entrapment operations. Both groups therefore felt their defensive posture was justified given the context—a perception that was not shared by the intervening governmental authorities, who to varying degrees interpreted the groups' behaviors absent its ideological context as hostile, aberrant, and extremely reckless to innocent members.

The YFZ ranch raid provides additional nuance into these situational context filters by presenting a non-violent group that drew a governmental response incommensurate with the professed governmental justification for intervention. The raid, conducted under what was subsequently determined to be unfounded criminal allegations that aligned with governmental presuppositions regarding the community's illicit activities, substantiated church leadership's existing anti-government narrative regarding prejudice against their religious beliefs, and an official desire to forcibly expropriate the community's children. Therefore, FLDS likely viewed homeland security stakeholders' actions as being indicative of an official desire to criminalize, publicly expose and humiliate, and disperse through misappropriation of child protective processes a private enclave of religious adherents. This perceived latest round of governmental persecution was in turn integrated with an ongoing FLDS religious narrative and interpreted as yet another existential trial and test by God of the community's collective strength of faith. Because the FLDS's reluctant yet nascent embrace of local stakeholders' efforts to establish dialogue with the group was usurped and abrogated by state officials' and politicians' prevailing agendas, the group likely viewed interaction with any governmental entity as simply a hidden pretext for further harassment, persecution, and intervention.

4. Confirmation of Independent Variable

Consequently, it appears the common independent variable that either led to or prevented successful resolution of governmental interventions into these opaque communities was the ability or failure by officials in adopting a strategy of pursuing

constructive, empathetic dialogue and routine interaction with opaque community leadership. In all three cases, local officials had at various times successfully deescalated potentially violent situations and eschewed perceived needs for governmental intervention by proactively and openly communicating with the closed group. In those cases that ended tragically, a failure to achieve a substantive, properly contextualized dialogue heightened perceptions of threat, compounded miscommunication between the adversarial parties, engendered bilateral intransigence in negotiations, and ultimately frustrated all attempts to establish a fertile environment for compromise and conflict avoidance. Although the most comprehensive documentation related to these communication barriers involves post-incursion periods of negotiation and duress, the available historical record is fraught with missed cues and unexploited inroads to constructive dialogue by homeland security officials that, had they been utilized, may have prevented heavy handed enforcement actions, fruitless interventions, or tragic tactical escalations.

5. Applicability to Future Events

Ultimately, homeland security practitioners cannot prevent an opaque community from developing in or relocating to their respective jurisdiction, at which times variations of the identified challenges illuminated in the case studies presented will inevitably emerge. Other jurisdictions have already dealt with opaque communities for some time with varying degrees of success. FLDS communities similar to the YFZ Ranch continue to exist near Pringle, South Dakota and Mancos, Colorado. The Muslim community Jamaat al-Fuqra (“Muslims of America”) near Red House, Virginia as well as at other closed rural enclaves constitutes a perennial situational awareness challenges to homeland security officials in those jurisdictions. Given that authorities cannot instill or compel a will or desire to cooperate upon the opaque group itself, the only recourse is to examine and modify their own behavior to ensure the greatest likelihood of a successful relationship with the closed community they face. With regard to the Waco tragedy, Newport highlights this need for independent initiative and self-reflection among official stakeholders when facing in particular future millenarian groups:

The state may not be able to change a group's doctrinal propensities, but it can control its own reactions, and in doing so may exert significant leverage over the outcome. The overt behavior of some millenarian groups will undoubtedly force state action, but the potential for violence can be mitigated if law-enforcement personnel avoid dramatic presentations of force. If, on the other hand, they naively become co-participants in millenarian's end-time script, future Wacos will be not merely probable; they will be inevitable.⁴⁸³

What similarly appears evident in each homeland security related interaction with secessionist, survivalist, militia, millenarian, or apocalyptic ideologies is that any effort by governmental actors to achieve constructive dialogue and cooperation on matters of mutual interest have the unfortunate potential to fall victim to the group's existing anti-governmental narratives. Group leaders can exploit outreach efforts by law enforcement to steer or leverage intra-group power dynamics. The perceived motive and purpose behind genuinely benign and altruistic official attempts to integrate opaque communities into emergency planning and response efforts can be purposely or inadvertently warped through the kaleidoscopic lens of conspiracy theories, making them appear to be clandestine efforts to control, infiltrate, influence, or destroy the group with which such partnership is sought.⁴⁸⁴ Just as occurred in all three examined cases, if an opaque community leader declares that the government only wants to register, control, expropriate, or remove members' guns, children, and finances, opportunities to interpret legitimate official interest in any of these will inevitably present themselves and serve as evidence in support of such assertions.

Although an interactional framework for successfully integrating opaque communities into homeland security efforts presupposes a governmental commitment to empathetic understanding of their beliefs, this is likely not sufficient to prevent future miscommunication-predicated tragedy. If homeland security stakeholders fail to view opaque communities as constituencies with full and equal rights to their alternative worldviews—as arcane, personally offensive, and generally unpopular as these may be—

⁴⁸³ Newport, "Cults, Religious Conflict, Religious Liberty and Frameworks of Order," 14.

⁴⁸⁴ For a comprehensive discussion of conspiracy theory barriers to law enforcement interactions with subculture groups, see Jamie Bartlett and Carl Miller, *The Power of Unreason—Conspiracy Theories, Extremism and Counter-terrorism* (London: Demos, 2010), 150.

they risk succumbing to their own Manichean mind-set predisposed to detect and disrupt presumed illicit activity. Once such a dualistic view becomes ingrained in governmental actors and empathetic, unbiased communication degrades into evidence-seeking and negotiation-oriented discourse, the actions of both government and community members risk being cross-interpreted according to pre-existing filters and narratives, leading to self-fulfilling, yet wholly avoidable, oppositional events. In other words, though an opaque community's beliefs may well have amplified members' perceived duress and ultimately led to a tragic apogee, such beliefs did not uniformly or patently prevent constructive dialogue prior to governmental imposition of interventionist tactics.

B. RECOMMENDATIONS

By recognizing the existing interactional frameworks with which they normally perceive opaque communities, homeland security practitioners can ensure they better cooperate and establish productive dialogue with the closed group absent bias, unfounded perceptions of threat, and oppositional filters. Officials who pursue targeted interaction and establish effective communication channels will be better enabled to obtain situational awareness regarding the community's true activities and intentions, resolve any legal disputes, dispel misinformation and rumors, and deescalate any confrontations between the community and outside actors. Through adoption of circumspective and properly contextualized interactional frameworks vis-à-vis opaque communities, stakeholders will be less prone to overestimating perceived threats or misinterpreting seemingly aberrant but innocuous opaque community member behavior. This capacity will further enable officials to establish tripwires indicative of actual threat escalation or disconcerting evolution of community intentions, ideology, or membership. In addition, officials will be better able to avoid making rash or unmeasured interventions into closed groups based on tenuous legal justifications and will have improved decision-making abilities in tactical situations that are deemed inexorable. Adoption of these improved operational qualities will enhance homeland security practitioners' stature, professionalism, and capabilities both among the impacted opaque community and larger constituency served.

1. Identified Potentially Viable Frameworks

Instances of successful interaction and communication between opaque community members and officials appear throughout the case studies analyzed and offer nascent but promising templates for future successful integrative efforts. Opaque community outreach exemplars were evident in each case, though the concurrent escalation of events prevented a comprehensive test of their viability in every instance. In the case of the Branch Davidians, Koresh repeatedly highlighted his cordial relationship with McLennan County Sheriff Jack Harwell, both before and during the standoff. Koresh had attempted to openly address law enforcement scrutiny of Mount Carmel by contacting a deputy after detecting an undercover officer posing as deliveryman, and Harwell's reputation with the Davidians was successfully leveraged in arranging the only face-to-face negotiation with the community during the siege. Prior to the Eldorado raid, Sheriff Doran had successfully developed intermediaries with FLDS leadership at the YFZ Ranch, leveraging these relationships in hosting meetings to facilitate mutual trust between the group, community leaders, and law enforcement. Finally, members of Philadelphia Police Department noted that officers were successful in communicating with MOVE during its formative years, and community action groups enjoyed some success in negotiating with MOVE members. It was likely only after MOVE developed its own oppositional framework to perceived police harassment and persecution that this dialogue became constrained and, ultimately, openly combative on both sides.

Among the case studies examined, it appears that two general scenarios emerged that frustrated formerly productive interaction with opaque groups. First, in the cases of both the YFZ Ranch and Branch Davidians, competing agendas of supra-jurisdictional entities and stakeholders appears to have thwarted existing successful government/opaque community relationships. Sheriffs in both Schleicher and McLennan Counties had established what appeared to be effective and enduring local relationships with their respective opaque groups. These relationships were later surmounted, likely discounted, and ultimately under-exploited by higher authority stakeholders from overlaying jurisdictions. The FBI did briefly leverage Sheriff Harwell's personal relationship with Koresh and Texas state officials did apparently incorporate Sheriff

Doran's input into their tactical decisions, with successful results in both cases. However, officials with little to no contact with or empirical understanding of the targeted opaque communities were ultimately responsible for decision-making regarding compelled governmental interactions with the targeted group. Though one might argue these officials' superseding agendas or operational constraints prevented full integration of local rapport with community members, the resultant unfortunate outcomes may nonetheless have been avoided if existing relationships with these entities had been fully exploited to establish productive dialogue and avoid further conflict.

A second and less manageable scenario involved the excommunication, banishment, or replacement of viable communication partners by the opaque group. In the case of the YFZ Ranch, one of Sheriff Doran's FLDS contacts was excommunicated and his wives reassigned to other members of the group, allegedly due to his relationship with the law enforcement. It is unknown if this penalty specifically targeted non-compliance with church chain-of-command protocols or was in response to unauthorized provision to outsiders of what was deemed sensitive community information. Donald Glassey's utility was likewise severely diminished given that although he was present at MOVE's foundation, it appeared his knowledge of the inner workings of the organization were limited by the time he was vetted as a confidential informant. Though Rodriguez/Gonzalez's actions in an undercover capacity do not constitute a conventional channel of communication with an opaque community "insider," he was nonetheless utilized by Koresh as a conduit for messaging prior to his being directed to leave the compound and intercede with his superiors on behalf of the Davidians. Direct and open communication with duly empowered opaque community leaders would have been preferable to any of the aforementioned scenarios. In the absence of such established conduits and protocols, however, the removal or cessation of any source of information from an otherwise entirely closed compound constitutes a grave setback to situational awareness maintenance efforts.

Though perhaps unique to FLDS opaque enclaves due to their presence in numerous rural jurisdictions, sheriff's offices have independently collaborated on issues related to opaque communities with promising results. In 2007, sheriffs from three

impacted jurisdictions met in Eldorado to discuss experiences and share information related to the FLDS.⁴⁸⁵ Such exchanges can be used to allay fears, reinforce positive operational frameworks, and provide a professional advice and counseling network for resolution of specific challenges in dealing with opaque groups. Though this meeting was group specific, training for county and municipal stakeholder agencies impacted by closed communities could provide replicable “best practices” and assist homeland security officials in avoiding the trap of restrictive and biased frameworks in dealing with such constituencies. As one attendee of the 2007 Eldorado meeting noted, “I need to provide [FLDS] with law enforcement and EMS. We’ve got their kids registered with the state for their home schooling. I feel real well about it right now, as long as I keep an open mind.”⁴⁸⁶ Such statements indicate a laudable degree of stakeholder self-awareness and objectivity: both enviable characteristics for officials serving in opaque community liaison roles.

Evidence throughout the three case studies indicates that homeland security practitioners’ threat analysis of the opaque community was flawed and tended to perceive community-wide threat where none was present. In addition to building reciprocal trust-based relationships with closed community leaders and members, officials will also need to develop and hone analytical frameworks that prevent a group’s opacity from acting as a threat confirmation bias or constituting a fallacy of composition. Analytical bias, selection of reliable sources, access to and interaction with the object of study, and the competing realities of the larger political environment have all been identified as key drivers of effective analysis.⁴⁸⁷ These stakeholder biases, combined with a lack of available sources of information or access to community members, compound the difficulties of effectively analyzing purposely-opaque groups. Yet by simply recognizing the limitations of available analysis, employing robust analytical tools, and contextualizing one’s operational framework and professional situational awareness

⁴⁸⁵ “Sheriffs Compare Notes on FLDS,” *Deseret Morning News* (Salt Lake City), May 9, 2007.

⁴⁸⁶ *Ibid.*

⁴⁸⁷ David Brannan, Anders Strindberg, and Kristin Darken, *A Practitioner’s Way Forward: Terrorism Analysis* (Salinas, CA: Agile Press, 2014), 15–32.

requirements with rigorous and objective standards for assessing threat, homeland security stakeholders will avoid many of the pitfalls encountered by their counterparts in Philadelphia, Waco, and Eldorado.

The use of social identity theory (SIT) may be useful in this endeavor. SIT “is based on an insistence that human action needs to be understood in its social context,” and that “through social identity, the subject is defined in social terms.”⁴⁸⁸ As a surveyor of opaque community behavior, homeland security stakeholders can employ SIT methodology to deconstruct and gain insight on community behavior, reactions to social stimuli, and likely attitudes towards governmental interest. SIT acts as a tool for self-assessment as well, however, enabling practitioners to view their own behavior and attitudes through the lens of their inherent social motivations, drivers, and influences. It “offers a framework for integrating insights from a variety of analytical models within an intercultural framework...it also allows the researcher to account for his or her own hermeneutic biases, as well as those of the research subject.”⁴⁸⁹ An existing body of applied theory research regarding SIT is available for use by homeland security practitioners in interactions with closed communities within their jurisdictions.⁴⁹⁰ By utilizing SIT in an interactional setting, stakeholders have an analytic tool that increases their understanding of opaque group members’ behavior and social motivators as well as the possible existence of their own oppositional mindset.

In their article “Interacting with “Cults”—A Policing Model,” Szubin, Jensen, and Gregg offer insightful recommendations for just such introspective, analytically supported interaction with arcane and culturally misunderstood new religious movements. The authors note that in dealing with obscure groups, perpetuating myths regarding the brainwashing of emotionally vulnerable members or assumptions that charismatic leaders are simply orchestrating financial cons are detrimental to community outreach efforts. Rather than simply stigmatizing the group by characterizing it as a

⁴⁸⁸ Stephen Reicher, “The Context of Social Identity: Domination, Resistance, and Change,” *Political Psychology* 25, no. 6 (2004): 921, 929. 921–945

⁴⁸⁹ Brannan, Strindberg, and Darken, *A Practitioner’s Way Forward*, 61.

⁴⁹⁰ For a comprehensive discussion of SIT’s potential utility at the operational level, see *A Practitioner’s Way Forward: Terrorism Analysis* by Brannan, Strindberg, and Darken.

“cult” and monitoring it as a presumed threat (i.e., adopting an oppositional framework), the authors recommend reaching out to sources of expertise within both the federal government and academia to educate and contextualize their assessments. By offering a typology of social risk factors, including neutral behaviors such as “unquestioning adherence to their leader,” adoption of “unfamiliar customs or rituals,” and segregation from the surrounding community, which the authors note, “says little about a group’s attitude towards violence or suicide,” the article provides tools by which authorities can question their innate assumptions or potential bias and set objective behavioral tripwires indicative of threat amplification.⁴⁹¹ They further identify establishment of constructive dialogue and relationships of trust as an effective means of enabling mutual understanding and fulfillment of situational awareness needs. Though not itself an opaque community, their case study involving the arrival of 150 members of the Taiwanese Chen Tao movement in Garland, Texas in August, 1997 stands as a paradigmatic employment of such outreach. A Garland police lieutenant assigned as the official liaison with the group established an effective rapport with Chen Tao members, facilitated dispute resolution, efficient event planning, and the mutually satisfactory management of media interest. Szubin, Jensen, and Gregg note, “the rapport allowed authorities to become so well acquainted with group activities that they probably would have noticed any changes that might have signaled planned violence or suicide” and permitted authorities to ask and meaningfully assess responses to questions regarding potential violent or suicidal intentions by the group.⁴⁹²

2. Opportunities for Establishing Communication

Stakeholders should consider a variety of operational and jurisdictional issues, practicalities, and community sensitivities when identifying viable means of outreach to opaque groups.

⁴⁹¹ Szubin, Jensen, and Gregg, “Interacting with ‘Cults:’ A Policing Model,” 19–23.

⁴⁹² *Ibid.*, 22.

a. Ideal Candidates

(1) Issues Impeding use of Federal Assets

There are a number of impediments—legal, operational, and practical—that hinder federal law enforcement’s abilities to collect and maintain intelligence on closed communities, establish regular and constructive dialogue with such groups, and seek methods of addressing known or suspected legal and regulatory infractions, community concerns, and homeland security planning and coordination efforts. First and foremost, practical circumstances prevent federal agencies and personnel from maintaining regular and recurring contact with opaque groups. Particularly with regard to opaque communities that domicile in rural and remote locations, federal assets are often challenged to travel frequently to communes and closed community property. Though such frequent contact is less problematic in urban settings, federal contact with individuals and groups is normally initiated through investigative interest. Unlike local law enforcement, fire department, social service employees, building and code inspectors, public utility personnel, teachers, and various other state, county, and municipal governmental entities, federal law enforcement traditionally has little need or predicate for regular and recurring compelled contact with opaque community members. Because these alternate local officers and assets do collectively have routine cause for such contact outside the scope of investigation or enforcement events (i.e., duress scenarios), they would appear to be better positioned than federal personnel to leverage interactions with opaque community members in the course of their customary duties into cooperative dialogue and the fulfillment of situational awareness requirements. Finally, although there may be potential federal interlocutors located at local offices, these officers are commonly either not permanently assigned to these offices, are required to rotate to new offices on a regular basis per agency policy, or seek promotions or other career opportunities that would draw them away from the given jurisdiction, which hinders their ability to establish long-term personal relationships with members and leadership of opaque groups.

A second impediment to the use of federal law enforcement for opaque community outreach involves the performance metrics and oversight mechanisms used to

focus, steer, and monitor federal law enforcement activity. The executive branch generally expects federal law enforcement officers to identify, investigate, and support the prosecution of federal crimes rather than dedicate time and energy to community relation efforts. Current metrics measuring case hours, arrests, seizures, and prosecutions prioritize enforcement over soft diplomacy and relationship building. These impediments aside, though a given federal office's supervisory chain could perhaps be convinced that dedication of official time and attention to development of an interactive dialogue with a local closed community may be a judicious use of agency resources, such a proposition would require both interest and advocacy on the part of the requesting party and a holistic view of homeland security and federal crime abatement on the part of this individual's supervisory chain. The reasonability of such a set of circumstances, combined with the rotational nature of most federal law enforcement human capital strategies, suggests that only in the most fortuitous scenario could such agency-supported investment of federal assets and organizationally ingrained willingness to adopt stewardship responsibilities for such local issues be conceived. Consequently, any dedication of federal law enforcement assets to opaque community communication and outreach efforts would need to be accompanied by revisions to agency missions and priorities as well as performance metrics if managerial support for such activity can be expected. A key challenge in designing such metrics involves establishing a definition of "successful" outreach that would satisfy congressional oversight and audits to justify public investment in such programs. This same issue has plagued efforts by foreign counterterrorism strategies to measure the quality of governmental engagement or to establish a means of definitively identifying a program's success or failure.⁴⁹³

As mentioned in previous chapters, two federal agencies with homeland security information sharing and intelligence gathering mandates—the FBI and DHS I&A—are well positioned to interact with opaque groups. However, corporate cultures, operational security protocols, authorities, and restrictions on information sharing frustrate their potential contributions to opaque community integration efforts. The FBI, as the lead

⁴⁹³ Brad Deardorff, "Countering Violent Extremism: The Challenge and the Opportunity" (master's thesis, Naval Postgraduate School, 2010), 9.

federal law enforcement agency, is most likely to interact with opaque groups pursuant to investigations of federal crimes and intelligence assessment cases.⁴⁹⁴ The FBI's *Domestic Investigations and Operations Guide* (DIOG) maintains the aforementioned assessment case category as a formal investigative activity that requires "no particular factual predication" to initiate.⁴⁹⁵ Type 4 Assessments, the purpose of which is defined as to "obtain and retain information to inform or facilitate intelligence analysis and planning" appear in particular to be potentially well suited for maintaining situational awareness on opaque groups. Type 4 assessments are neither "threat specific" nor duration constrained. However, they do require an "authorized purpose and clearly defined objective(s)" and "cannot be based on the exercise of First Amendment protected activities or on race, ethnicity, national origin or religion, or a combination of only such factors."⁴⁹⁶ The DIOG also identifies "liaison activities and tripwires," loosely defined as informal public outreach and community liaison efforts, as an authorized FBI activity, though any actions utilizing delineated "investigative method[s]" necessitate formal case initiation procedures.⁴⁹⁷ Though collectively, these actions may authorize and sufficiently formalize protocols for opaque community liaison activities and enable the FBI to fulfill its own intelligence requirements, they remain solely within the purview of the FBI's investigative and intelligence collection functions. Any information gleaned from such actions is likely prohibited from being freely shared outside FBI channels or with non-law enforcement entities, as discussed below. Because the DIOG also prohibits official situational awareness gathering activities regarding opaque groups established solely on religious or other First Amendment protected beliefs, these types of officially sanctioned inquiries may be neither permitted nor applicable to a full spectrum of closed community types.

The dissemination of any information captured by the FBI is highly restricted per agency regulations. FBI case reports are currently handled and stored on a classified

⁴⁹⁴ U.S. Department of Justice, *The Attorney General's Guidelines*.

⁴⁹⁵ Federal Bureau of Investigation, *Domestic Investigations and Operations Guide (DIOG)* (Washington, DC: U.S. Department of Justice, 2011), 5–1.

⁴⁹⁶ *Ibid.*, 5–17; 5–18.

⁴⁹⁷ *Ibid.*, 11–1.

network that houses both the legacy Automated Case Support (ACS) and Sentinel case management systems. Unfortunately, because FBI documents commingle sensitive and classified information, processes to redact and share information beyond the FBI with state and local department and offices are restrictive and manually burdensome.⁴⁹⁸ Additionally, the FBI's current information sharing policies, protocols, and corporate culture have been shown to be problematic for the routine sharing with and between state and local law enforcement agencies. Gomez notes,

The FBI has repeatedly asserted its commitment to information sharing, but the available information indicates that the primary focus on this effort will continue to be primarily dependent on 'ad hoc' methods, like the JTTF, FIG and Fusion Centers. Unfortunately, these 'ad hoc' methods are susceptible to obstructive behavior by individual FBI employees, who may be opposed to sharing information, overly protective of information or other obstructionist motivations.⁴⁹⁹

Deardorff bolsters this sentiment, noting, "JTTFs do not have the authority or a formal mechanism to disseminate information beyond participants in the task force," and, "enjoy only limited analytical capability for counterterrorism matters in support of local and regional issues or threats because intelligence collection priorities are generally related to foreign-focused national intelligence requirements, not societal factors that influence domestic radicalization."⁵⁰⁰ Due to these organizational barriers and collective restrictions with sharing classified case and intelligence reports with state and local homeland security stakeholders who do not hold FBI security clearances, as well as limited availability of networks capable of storing and handling such information, use of FBI systems as a repository for information on opaque groups is deemed overly restrictive and operationally problematic.⁵⁰¹

DHS I&A, through its legislative mandate and in support of multiple federal strategies to support the national network of state and local fusion centers, has additional

⁴⁹⁸ Peter L. Gomez, "Enhancing FBI Terrorism and Homeland Security Information Sharing With State, Local and Tribal Agencies" (master's thesis, Naval Postgraduate School, 2010), 35–36.

⁴⁹⁹ *Ibid.*, 17.

⁵⁰⁰ Brad Deardorff, *The Roots of Our Children's War* (Williams, CA: Agile Press, 2013), 141–142.

⁵⁰¹ Gomez, "Enhancing FBI Terrorism," 11.

opportunities to assist homeland security efforts to obtain and maintain situational awareness intelligence on opaque communities.⁵⁰² Because fusion centers are locally owned and controlled assets supported by the federal government, they are uniquely enabled to tailor the collection, receipt, analysis, and dissemination of relevant homeland security threat information from and between federal, state, and local stakeholders.⁵⁰³ Fusion centers serve as a conduit for national security related information, including classified intelligence, to state and local partners.⁵⁰⁴ Because DHS I&A is not an investigative agency and the majority of its reporting is purposely made available at the unclassified level via the Homeland Security Information Network, the agency does not face the same information sharing restrictions that prevent full dissemination of FBI information.⁵⁰⁵ However, DHS I&A employee contact with opaque communities would be limited to secondhand information gathering from state and local partner agencies and personnel, meaning the agency could not currently fulfill the role of providing direct liaison with opaque groups. Also, as a member of the U.S. Intelligence Community, I&A is restricted in the types of information it can collect and process regarding U.S. citizens, hampering its ability to act as a repository for comprehensive situational awareness intelligence on opaque groups.⁵⁰⁶ These necessary and prudent restrictions aside, I&A's lack of an investigative mandate and ability to act as a force multiplier and intermediary for federal information sources allows state and local partners a significant degree of autonomy and operational flexibility unavailable via partnerships with traditional federal law enforcement entities.

(2) Benefits of Local Liaison Providers

⁵⁰² "Fusion Centers' Support of National Strategies and Guidance," U.S. Department of Homeland Security, accessed July 17, 2014, <http://www.dhs.gov/topic/fusion-centers-support-national-strategies-and-guidance>.

⁵⁰³ U.S. Department of Homeland Security, "State and Major Urban Area Fusion Centers."

⁵⁰⁴ "New Information-Sharing Tool for Fusion Centers Announced," U.S. Department of Homeland Security, accessed July 17, 2014, <http://www.dhs.gov/news/2009/09/14/new-information-sharing-tool-fusion-centers-announced>.

⁵⁰⁵ "HSIN-Intelligence," U.S. Department of Homeland Security, accessed July 17, 2014, <http://www.dhs.gov/hsin-intelligence>.

⁵⁰⁶ U.S. Department of Homeland Security, "More About the Office of Intelligence and Analysis Mission;" White House, "Executive Order 12333."

Given these restrictions to the use of federal law enforcement and intelligence assets to promote interaction with and maintain information regarding opaque communities, it would appear local stakeholders are more suitable candidates to provide liaison services to such groups. Based on insights gained from the selected cases, it would appear the office of county sheriff is particularly well suited to fulfill this role. First, the office of sheriff is normally the only popularly elected law enforcement position with whom constituents have regular contact. As such, the office constitutes a quasi-political post with law enforcement powers. Through posse comitatus-derived common law or statutory authority, it is also the law enforcement office of primacy in most jurisdictions. Sheriffs may therefore enjoy a greater degree of perceived democratic legitimacy than federal or state law enforcement officers, over whose selection local populations have no say. Sheriffs can be viewed as “one of us” by local populations, and the office is widely free of the stigmas associated with federal and state hegemony or interest in local issues. A personal, local relationship between an elected law enforcement representative and the opaque community constituency he or she serves would therefore seem to be an ideal platform from which to build liaison relationships.

Through judicial service of process functions, support to civil procedures, operation of local correctional facilities, and integration with county departments and agencies, sheriffs are the local entity most likely to have compelled interaction with opaque communities. As most common legal infractions involving opaque community members would involve violations of state and local rather than federal laws and regulations, sheriffs would have the greatest need for routine enforcement contact, in particular as the service agent for any warrants from county courts. Finally, because sheriffs and their deputies are responsible for a limited geographic area and normally enjoy a lengthy tenure in their position, they are well positioned to maintain long-term, personal relationships with opaque group members and leadership. Note that as two of the three selected cases involved opaque groups situated in rural settings—a common practice by communities looking to withdraw from greater society—counties rather than municipalities are more likely to be the office of primary jurisdiction over enclaves and compounds situated in unincorporated areas.

Unlike various other federal and state agencies, a sheriff's traditional mandate to "maintain the peace" of a given jurisdiction is likewise sufficiently vague to allow for dedication of time and assets to opaque community outreach efforts. Sheriffs, by virtue of selection by electorate, hold executive powers and answer directly to their constituents, which allows them to advocate for interaction and cooperation with closed groups without the burdens of administrative oversight or justification metrics. Although sheriff offices would need to ensure adherence to the aforementioned information collection and storage restrictions using 28 CFR Part 23 compliant systems, they are better able through routine contact and local presence to develop institutional knowledge and situational awareness of an opaque group and advise their constituents accordingly.

There are two caveats to the proposal that the office of sheriff is generally an ideal liaison position. First, in large urban areas, major city police departments may be better positioned to maintain regular contact with opaque enclaves due to municipal jurisdiction and greater contact frequency between officers and group members. Practicality and operational convenience matters aside, such arrangements could be coordinated with the respective county authority to ensure full exploitation of the unique stature frequently associated with the popularly elected position of sheriff. Second, homeland security stakeholders should take care never to reject an available alternative interlocutor, regardless of their office, authorities, or discipline. If a given opaque community has an existing relationship or ongoing dialogue with a governmental function, office, employee, sheriff offices and other stakeholder agencies should take care to nurture and exploit this inroad to situational awareness as a platform for further relationship development. As discussed below and highlighted throughout the case studies, due to the premium placed by social groups on strong interpersonal relationships founded on trust, efforts that attempt to usurp or abrogate existing functional relationships between individual governmental personnel and opaque community members should be maintained and incorporated into situational awareness gathering activities at all costs.

It would therefore appear that homeland security stakeholders at the county level are the most appropriate candidates for relationship building with opaque groups. The key to successful implementation of sheriff-led outreach strategies will, however, require

strong support from the state and local levels. First, higher jurisdictions would need to collaborate with while deferring to the sheriff's interactional decisions and assessments regarding opaque communities, regardless of outside political pressure to impose jurisdictional supremacy over dealings with such groups. Arredondo advocates for this collaborative model, noting that in the Eldorado raid, Texas authorities "[should] have deferred to the sheriff's sense of the development of the case rather than announcing the warrant execution and demanding assistance from local agencies."⁵⁰⁷ Second, sheriffs would have to be willing to share and disseminate situational awareness information outside of their jurisdiction to satisfy and enable state and federal stakeholders to inform and advise policy makers and executives who may view opaque groups as a threat. Third, fusion centers, DHS I&A, and the FBI would need to provide coordination and support to sheriffs in dealing with opaque groups, in particular if such groups (such as the FLDS) maintain enclaves and compounds in other jurisdictions, include foreign members, or are identified as having potentially violated federal laws. In the event that higher jurisdictions are compelled to intervene into opaque communities or enforce state and federal laws, all efforts should be made to leverage the sheriff's existing relationship with an opaque community to clearly communicate governmental intentions, respond to concerns, facilitate pre-negotiated surrender of sought members, and avoid misinterpretation of tactical operations. Strong cooperative relationships involving all levels of homeland security stakeholders operating under the agreement that the sheriff would take the lead position in communication and contact with the opaque group will be necessary if this strategy is to succeed.

3. Selection of an Appropriate Interlocutor

Regardless of the agency, office, or position(s) selected to act as the homeland security liaison with an opaque community, additional consideration should be given to the personality, interpersonal skills, charisma, traits, and diplomatic abilities of the chosen interlocutor to ensure an appropriate fit between governmental representative and targeted group. Attempts should be made to identify a candidate who can both empathize

⁵⁰⁷ Arredondo, "Toward a Viable Policing Model," 141.

with opaque group's ideology, ultimate concerns, and cultural sensitivities while firmly advocating for rule of law and governmental dominion over secular matters. Selection of an official communicator based on gender, race, age, religious background, or appearance may be anathema to stakeholder agencies and potentially criticized as governmental attempts to cater to a given opaque community's culturally despicable or religiously intolerant beliefs. However, just as attempting to force a Muslim fundamentalist imam to interact with a young female officer would create potentially insurmountable communication barriers, attempts at compelling opaque groups to cooperate with an interlocutor whose presence or authority incenses or offends their core beliefs would only antagonize and frustrate attempts to integrate these members into the larger community.

Due in part to their training and experience in operating according to government use of force continuum guidelines, law enforcement officers in particular often find it challenging to remain objective and deflect confrontation from entities that neither respect nor acknowledge their authority. Docherty identifies this very issue as a lesson learned following the Waco tragedy.⁵⁰⁸ Namely, that liaison officers who are unable to tolerate challenges to their authority are likely to develop into lightning rods for opaque community grievances or to make tactical decisions based on ideological grounds rather than objective indicators or articulable threats:

According to Weber,

Barricaded communities, by their very existence, post a threat to the identities of law enforcement agents. Unconventional political or religious groups that refuse to recognize the legitimacy of the state are denying the state's status as a 'compulsory association with a territorial basis' that holds the right to 'monopolize the use of force' within its territorial jurisdiction.

Law enforcement agencies are the coercive arm of the state. In order to function in their jobs, law enforcement agents must assume the legitimacy of the state, and they must believe in their right to wield force on behalf of the state. Facing barricaded subjects who do not grant that legitimacy compels law enforcement agents to acknowledge the fragility of the "negotiated order" that grant their role legitimacy, which threatens the

⁵⁰⁸ Docherty, *Learning Lessons from Waco*, 277–278.

identities of law enforcement agents at a deep personal level. It also requires a high level of self-reflection while one is engaged in doing dangerous and difficult work.”⁵⁰⁹

Finally, interpersonal relationships between homeland security stakeholders and opaque community members and leadership are relationships of trust. Strong relationships overcome mistrust, and research has demonstrated that individuals are more likely to trust other people than impersonal bureaucracies or organizations, with close and stable personal relationships proving to be crucial in building emotional or “affective” trust and a belief that a given institution is dedicated to the community’s welfare and needs.⁵¹⁰ A need to personalize interactions with the public has been shown to be critical for law enforcement agencies, particularly in communities where trust in government is low and conspiracy theories abound.⁵¹¹ In his article “Intelligence and Homeland Defense,” Crumpton underscores this proposition, noting,

The essence of intelligence success in the homeland is voluntary cooperation, with law enforcement playing a complementary role and employing legal intrusive means against bona fide suspects. Intelligence relationships, contrary to popular literature, are built more on interdependence and trust than on coercion.⁵¹²

As such, ideal candidates and successful community liaison personnel will need to be willing to embrace a long term relationship with the opaque community to allow such personal bonds and trust to develop. Likewise, stakeholder agency management will need to support investments in opaque community outreach through dedication of personnel and by ensuring the career track of volunteers for liaison positions aligns with agency support for such outreach initiatives so that employee turnover and promotions do not frustrate these dedicated relationship building efforts.

⁵⁰⁹ Ibid., 277–278.

⁵¹⁰ Bartlett and Carl Miller, *The Power of Unreason*, 42.

⁵¹¹ Simon Parker et al., *State of Trust—How to Build Better Relationships Between Councils and the Public* (London: Demos, 2008), 26, http://www.demos.co.uk/files/Trust_web_ALL%20_032.pdf

⁵¹² Henry A. Crumpton, “Intelligence and Homeland Defense,” in *Transforming U.S. Intelligence*, ed. Jennifer E. Sims and Burton Gerber (Washington, DC: Georgetown University Press, 2005), 208. 162–179.

4. Alternative Sources of Situational Awareness Information

With regard to the available methods for obtaining better knowledge about closed religious groups, Sullivan highlights the shortsightedness of officials' perception that existing legal constraints to intelligence gathering limit their potential inroads to contextual understanding of such communities. In particular, he highlights that stakeholders' preferences for illegal surveillance activities targeting law-abiding religious groups is due to a mistaken belief in such communities' individual nature. Alternatively, Sullivan notes, "to know more about religion does not require transgressing the law to gather intelligence. University curricula in religious studies are grounded on information publicly available in libraries and bookstores."⁵¹³ The MOVE Commission concurred with this assessment in its recommendations, noting,

The City should maintain and periodically update a list of experts who could be consulted on short notice in situations involving hostages, cult groups, terrorist organizations...or other crisis situations. Appropriate City Officials should maintain contact with these experts to insure their ready availability in time of need.⁵¹⁴

Though certainly beneficial when interacting with many obscure religious groups, this course of action would not necessarily contribute to comprehensive understanding and awareness of opaque religious communities, nor does it solve information deficiencies involving closed secular enclaves. Understanding the religious world views and accompanying ultimate concerns and motivations of a group may be a prerequisite to constructive and properly contextualized dialogue with its members, but it does not in itself solve the challenge of assessing threat, actual or merely perceived, emanating from such a closed diaspora.

In order for homeland security stakeholder to obtain situational awareness on opaque groups that are purposely secretive or discreet, exploitation of alternative means of obtaining information on the group will be necessary. In addition to visual monitoring from public areas, installation of surveillance cameras, and use of aircraft over flights to

⁵¹³ Sullivan, "No Longer the Messiah," 229.

⁵¹⁴ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 64.

obtain imagery of an enclave or compound, officials should explore the use of every compelled interaction with the group and debriefings of each office or individual with knowledge of the community as a potential opportunity to gather contextual information. Firefighters, emergency medical service, health practitioners, property records, county tax assessments, building code and zoning inspections, home schooling waiver applications, vital records, health and social service providers, driver's licensing and vehicle registration records, mail carriers, local retailers, and neighbors all constitute entities that might have compelled or routine contact with opaque community members. Though client or recipient confidentiality protections may restrict sharing some of the information obtained from such entities, general information regarding the community itself rather than on individual members and/or that contains personally identifiable information could nevertheless be invaluable for situational awareness purposes.

Though homeland security stakeholders do not routinely canvass these entities to fulfill information needs, the challenges inherent to effectively assessing opaque community makeup and capabilities and in setting tripwires for aberrant behavior indicative of threat amplification necessitate their inclusion in situational awareness monitoring activities. And although information obtained from one or more of these potential sources in the course of routine interaction with members of opaque communities may not in itself seem valuable, when collated with additional sources of information and placed in a composite, such information can prove to be extremely valuable to homeland security efforts. A key cultural barrier to the development of information sharing between law enforcement agencies and various "non-traditional" official sources of information involves the sharing of "law enforcement sensitive" information.

Though not officially defined within 28 CFR Part 23, this term is generally understood to include information regarding actual and suspect criminal acts, personally identifiable information regarding known or suspected criminal actors, investigative findings, and/or criminal intelligence information. Due to the sensitivity of such information, many law enforcement agencies are reluctant to share such types of information with non-law enforcement entities in the interest of discretion, evidentiary

process, operational security, and preservation of investigative potential. In addition, there exists a common misunderstanding among law enforcement that “law enforcement sensitive” information is either a formal legal term or statutory definition that restricts its dissemination within law enforcement channels, neither of which is true. The Department of Justice has, in fact, issued opinions that clearly establish

that the term does not require that an agency have law enforcement or investigative authority in order to qualify under an intelligence project’s ‘need to know’ and ‘right to know’ criteria,” and that, “accordingly, those professionals, whether working...at other Federal, State, or local agencies engaged in this pursuit, may appropriately be provided access to the information they need to do the same, regardless of whether or not they themselves, or the agency in question, carry the title ‘law enforcement officer’ or ‘law enforcement agency.’⁵¹⁵

As such, it remains at the discretion of the law enforcement stakeholder to determine whether non-traditional contributors and consumers of criminal intelligence fulfill these criteria. Consequently, sworn officers, investigators, and intelligence personnel should refrain from perpetuating misinformed and self-imposed limitations on their ability to obtain situational awareness information on opaque groups through proscribed sharing of “law enforcement sensitive” information on specific members of opaque groups with non-law enforcement entities.

The recommendations of Philadelphia’s MOVE Commission were likewise prescient on this point. The commission’s third proposed enhancement to the city’s governmental operations included development of an “Information Collection and Analysis” capability:

The City should promptly establish an integrated system for the collection, analysis and appropriate dissemination of relevant information relating to crises which affect public health, safety and welfare. The City Solicitor should have an advisory role in such a system to ensure that civil liberties and rights are respected. Interdepartmental communication should be strengthened to improve operational coordination.⁵¹⁶

⁵¹⁵ John J. Wilson, *U.S. Department of Justice, Office of Justice Programs, Office of the General Counsel Legal Opinion on the Scope of 28 CFR Part 23* (Washington, DC: U.S. Department of Justice, March 31, 2005).

⁵¹⁶ Philadelphia Special Investigation Commission, *The Findings, Conclusions*, 58.

Seven years before Waco and 22 years before the YFZ Ranch raid, this recommendation clearly presages a holistic view of homeland security efforts that crosscuts the spectrum of governmental agencies and functions as a preferred means of countering the challenges of an opaque group. Note that this mechanism is clearly delineated from the separate but complementary critical functions of both “police intelligence” (recommendation 13) and the intelligence capabilities of the fire department (recommendation 22) while incorporating legal oversight procedures and interagency coordination considerations. Though the commission’s recommendations targeted a major metropolitan government, similar functions could be established at the county level, or integrated into the operations of a given jurisdiction’s respective fusion center.

One caveat should be made with regard to any governmental attempts to infiltrate opaque communities or develop confidential informants from the ranks of their membership. Sheriff Doran’s source of information regarding the YFZ Ranch likely provided valuable situational awareness information up until his unmasking and excommunication by FLDS leadership, and BATF undercover agent Rodriguez, posing as Robert Gonzalez, certainly provided his agency’s leadership with crucial information regarding the circumstances within Mount Carmel immediately prior to the federal raid. Koresh even attempted to leverage Gonzalez’s false identity in a last ditch attempt to communicate directly with BATF leadership and deescalate the situation, despite his knowledge that Gonzalez’s presence was a ruse. However, it should be noted that the targeted communities ultimately exposed these confidential and/or undercover sources in both cases. It likewise appears MOVE was distrustful of Glassey, if not indeed aware of his status as a federal informant. Not only does discovery of confidential informants curtail the flow of additional situational awareness information: it also creates suspicion and distrust of any accompanying *overt* governmental overtures towards community relations, degrading relationships of trust. In every case in which infiltration into or covert collection on an opaque community is being considered, homeland security officials should carefully consider both whether such tactics are the only ones available and whether potential exposure of the operation would do more harm to their relationship

with the targeted community outweighing any situational awareness information thereby gleaned.

The use of zoning, licensing, tax assessments, and other regulatory and municipal or county code mechanism is another often untapped means of gaining access to and prompting interaction with opaque groups. As evidenced throughout its tribulations in dealing with MOVE, the city's unwillingness to enforce zoning, building code, and other ordinances both limited its visibility over the group's barricaded compounds and telegraphed official appeasement of MOVE's bellicose rhetoric. Similar failures to inspect both Mount Carmel and YFZ Ranch on a regular basis, or to enforce local ordinances that regulate the use of land and facilities, constituted lost opportunities for enhancements to situational awareness of these groups as well as identification of potentially more viable overtures for ongoing contact with the respective inhabitants. Arredondo notes,

Planning and zoning ordinances are appropriate tools for ensuring that communities are properly developed and built to afford easy access by public services (police, fire, emergency vehicles). They are also helpful in discouraging enclaves and compounds, which often violate environmental and sanitary laws.⁵¹⁷

From the homeland security practitioner's standpoint, such tools can likewise assist in obtaining and increasing the fidelity of situational awareness concerning geographic voids for which they are responsible but about which they lack needed visibility.

Finally, in the absence of statutory inroads to compel cooperation with homeland security efforts from opaque communities or legal justification to intervene into its activities, stakeholders having legitimate cause should not discount the availability and potential benefits of pursuing civil torts and actions against such groups. Civil process forces a modicum of interaction with the group, shedding light on actual circumstances, makeup, and activities of the community. Successful civil actions also create legal justification for future intervention actions such as judicial order, cease and desist notices, and asset forfeiture proceedings. Such actions thereby empower and legitimize law

⁵¹⁷ Arredondo, "Toward a Viable Policing Model," 143.

enforcement or other governmental actors with viable premise to enter a denied area, compound, or enclave through alternative legal means. Coalitions including impacted community members such as “The United Residents of the 6200 Block of Osage Avenue” could be involved in such actions, albeit too late in the evolution of the MOVE tragedy. Note that the YFZ Ranch was ultimately seized through civil, not criminal, forfeiture to the State of Texas, demonstrating the potential impact of such efforts. It should, however, be recognized that such actions would and will undoubtedly anger the opaque community and frustrate any subsequent attempts at establishing a conciliatory or amicable relationship between officials and the targeted community. As an avenue of last resort, however, civil suits are preferable to tactical interventions into a defiant or barricaded closed community, and remain promising alternatives for avoiding violent altercations with such groups.

5. Acknowledging Defeat: Unresponsive Opaque Communities

Ultimately, if an opaque group eschews all forms of voluntary contact and homeland security stakeholders are unable to identify regulatory, criminal predicate-based, or civil grounds for forcing compelled interaction with the group, officials may need to resign themselves to growing accustomed to and comfortable with the presence of the unknown. The 1st and 14th Amendments clearly underscore a group’s rights to pursue a lifestyle of its choosing and prevent undue governmental intrusion into members’ private affairs. Stakeholders must be willing, upon exhaustion of legal inroads to corroborate or substantiate a perceived opaque community-sourced threat, to withdraw and allow the group to exist uninhibited. As has been demonstrated in the above cases, oppositional frameworks and the underlying desire to intercede to satisfy situational awareness deficits without articulable grounds leads to legally unsupported and tactically problematic interventions. Stakeholders must recognize they should exhaust the use of all available sources and tools to obtain information on a group and, barring identification of criminal predicate or other indication of articulable threat, withdraw.

Even in such cases, every effort should be made to clearly communicate and provide justification for official interest in certain characteristics of the opaque

community for the purposes of homeland security planning and response. At a minimum, homeland security practitioners can propose that information regarding the size and makeup of a given community is necessary for potential emergency response or evacuation contingencies. Stakeholders should clearly and repeatedly communicate their reasoning for why a modicum of situational awareness regarding the group is necessary for the mutual safety of members of both the opaque and surrounding communities, highlighting the governmental interest in balancing protection of the opaque group's privacy and beliefs with a need to address any misunderstanding and fear among the populace impacted by its presence. If such concerns are expressed and requests for information advocated for by officials absent perceived prejudicial or discriminatory interest in or judgment of the opaque community and its given practices or ideology, stakeholders have a high likelihood of obtaining such information in a reasonable, legal, and non-contentious manner.

C. POTENTIAL AREAS OF FURTHER INQUIRY

This study revealed numerous areas of potential future research that would provide additional insights into the opaque community phenomenon. An examination of various legal aspects affecting closed groups, research into additional identified case studies, and comparisons to potentially applicable outreach campaigns and governmental messaging strategies would benefit homeland security practitioners' understanding and context in this area.

1. Legal Parameters

Nilson, in arguing for a lowered evidentiary burden and expanded ability to treat enclaves as extended families for the purposes of child removal by the state notes,

Asserting that the Ranch constitutes a legal family for the purpose of a parental termination proceeding is much different from a religious community that may share a belief system, attend religious services together, share meals together, etc., but are still members of the rest of

society because they live and work and integrate with people outside of their community.⁵¹⁸

She views the expansion of state imposition over controversial child rearing practices—such as those seen in MOVE, FLDS, and the Branch Davidians—as liberated from constitutional protections for the free exercise of religion and due process because closed, opaque groups fail to conform to traditional definitions of domesticity blur the lines between family and community. At what juncture, then, opaque groups become “families” for the purposes of child protection and removal efforts, governmental intrusions into the “home” become legitimate state actions, and official monitoring of the religious affairs of such groups is deemed legally justifiable action in support of a bona fide state interest remain fields of potential further inquiry.

2. Additional Case Studies

An area of potentially valuable future study would be the identification of successful, long-term interactions between homeland security practitioners and opaque communities. The aforementioned 1985 BATF raid of the CSA compound at Zarephath-Horeb and the 1996 FBI standoff with the Montana Freeman at the “Justus Township” near Jordan, Montana constitute potential models of successful interventions into opaque communities. These events did constitute governmental interventions into opaque communities that fortunately ended in successful peaceful negotiations and surrender by community members. However, as they did not actually avoid use of force escalation and establishment of duress situations, these events are likely less paradigmatic of successful government/community dispute resolution prior to barricaded negotiations. Though these events may then serve as case studies for identifying viable ‘isolate and wait’ tactics predicated on deliberative, nuanced negotiation strategies, they could simultaneously be viewed as failed attempts or missed opportunities for preventing opaque groups from embracing barricaded resistance to governmental sovereignty. Further inquiry into the context and circumstances that led to these armed standoffs, to include identification of any pre-event efforts to establish constructive dialogue with the communities, previous

⁵¹⁸ Nilson, “Yearning for Zion Ranch Raid,” 342.

fulfillment of governmental situational awareness intelligence requirements, or earlier success among homeland security practitioners in resolving previous conflicts with these groups, constitute a area in need of additional critical study.

Their utility as functional models for dealing with opaque groups aside, these cases do highlight a key aspect of the unsuccessful interactional frameworks identified in the three cases studied. Namely, that any “threat of the unknown” emanating from opaque communities is effectively eliminated through isolation and establishment of a safety buffer. Interventions targeting the CSA, Montana Freeman, and countless other cases involving law enforcement establishment of a perimeter and official resolution to engage a targeted community in long term negotiations absent threat of assault or other “stress escalation” and urgency generating tactics have led to successful resolutions. For this to occur, authorities must be willing to defer opaque community submission to judicially authorized but, in terms of actual threat, unnecessary governmental use of force and imposition of state sovereignty. Aggravating scenarios such as hostage situations, the potential for mass suicide, or suspected deployment of a weapon of mass destruction constitute circumstances that, if detected within an isolated opaque community, would necessitate abandonment of such “surround and talk” tactics. Absent such situations, once cordoned off and contained, opaque groups—whatever their capabilities and intentions—can no longer pose a real or hypothetical threat to the surrounding community. Consequently, isolation tactics offer at minimum an attractive option that though less desirable than effective communication and interaction is preferable to armed incursion and open conflict. This again constitutes an area of existing and future study with relation to opaque communities.

3. Outreach Campaigns

Note that after establishing a dialogue and making constructive headway with a closed group, local law enforcement may find themselves acting as a defender or ersatz advocate for the group—a situation that may become personally uncomfortable or, in the case of elected officials such as the sheriff, politically untenable. This in fact may be a causative factor for a past tendency among local law enforcement to purposely seek

supra-jurisdictional assistance in dealing with opaque groups, such as occurred with both MOVE and the Branch Davidians. An area of further study may involve the exploration of successful methods for advocating the need for restraint and dialogue with regard to the opaque group among the larger constituency served. In particular, the success or utility of previous public awareness campaigns, officially sponsored “meet and greet” events between group members and their neighbors, or official coordination with local media to shape and inform public perceptions should be examined for potential replication in other jurisdictions having opaque communities.

4. Similarities to Countering Violent Extremism Strategies

It should be noted that many of the recommendations included above are similar in nature to strategies employed in countering domestic and international violent extremism, counter-insurgency, and counter-terrorism efforts. Whereas these activities normally attempt to offer a counterweight or alternative narrative to known violent ideology espoused by groups actively countering or purposely targeting governments and nations, many of the outreach efforts employed when countering violent extremism are potentially transferrable to opaque communities. Deardorff, in describing ideal conditions for implementation of countering violent extremist ideology, notes the importance of strategies that incorporate local government officials and agencies.⁵¹⁹ He likewise identifies trust as the principle requirement for successful community collaboration, noting, “when one demonstrates empathy—the ability to understand, if not sympathize, with another’s condition—it affords the ability to speak frankly about local grievances with the...community and the security concerns of the government.”⁵²⁰ The Obama Administration’s 2011 proclamation entitled *Empowering Local Partners to Prevent Violent Extremism in the United States* buttresses this argument for local rather than federal implementation efforts, noting:

The Federal Government will often be ill-suited to intervene in the niches of society where radicalization to violence takes place, but it can foster partnerships to support communities through its connections to local

⁵¹⁹ Deardorff, *The Roots of Our Children’s War*, 203.

⁵²⁰ *Ibid.*, 202.

government, law enforcement, Mayor's offices, the private sector, local service providers, academia, and many others who can help prevent violent extremism. Federal departments and agencies have begun expanding support to local stakeholders and practitioners who are on the ground and positioned to develop grassroots partnerships with the communities they serve.⁵²¹

Here again, additional study regarding the potential application of these and other countering violent extremism strategies would be beneficial to determining how and to what extent such initiatives could be employed towards altering homeland security practitioners existing oppositional frameworks and improving relationships with opaque communities prior to the emergence of violence.

D. CONCLUDING REMARKS

It has been shown through this study that opaque communities present a pervasive and enduring challenge to the maintenance of homeland security in our nation. The social and ideological but not physical withdrawal of significant groups of citizens from our society is a perennial source of anxiety and concern, both to the surrounding community and to those tasked with ensuring the safety and welfare of all impacted stakeholders. Though homeland security practitioners cannot and should not attempt to alter the beliefs and legal behavior of such opaque communities, they can amend their professional frameworks, strive to overcome any default biases, and ensure official conduct does not itself unintentionally manifest a given population's potential millenarian fears, instigate violent defensive reaction, or otherwise cause distress and distrust among a group exercising its constitutional right to congregate, pursue shared beliefs, and seek solitude or isolation. By recognizing the potential existence of oppositional frameworks, maintaining objectivity, selecting appropriate community liaison officials, and pursuing targeted interaction and communication with opaque communities to the greatest degree possible, homeland security stakeholders will largely be able to avoid the mistakes of the past and guarantee that the threat of the unknown is never again mistaken for or regarded as clear and present danger.

⁵²¹ Executive Office of the President of the United States, *Empowering Local Partners to Prevent Violent Extremism in the United States* (Washington, DC: White House, 2011), 3.

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